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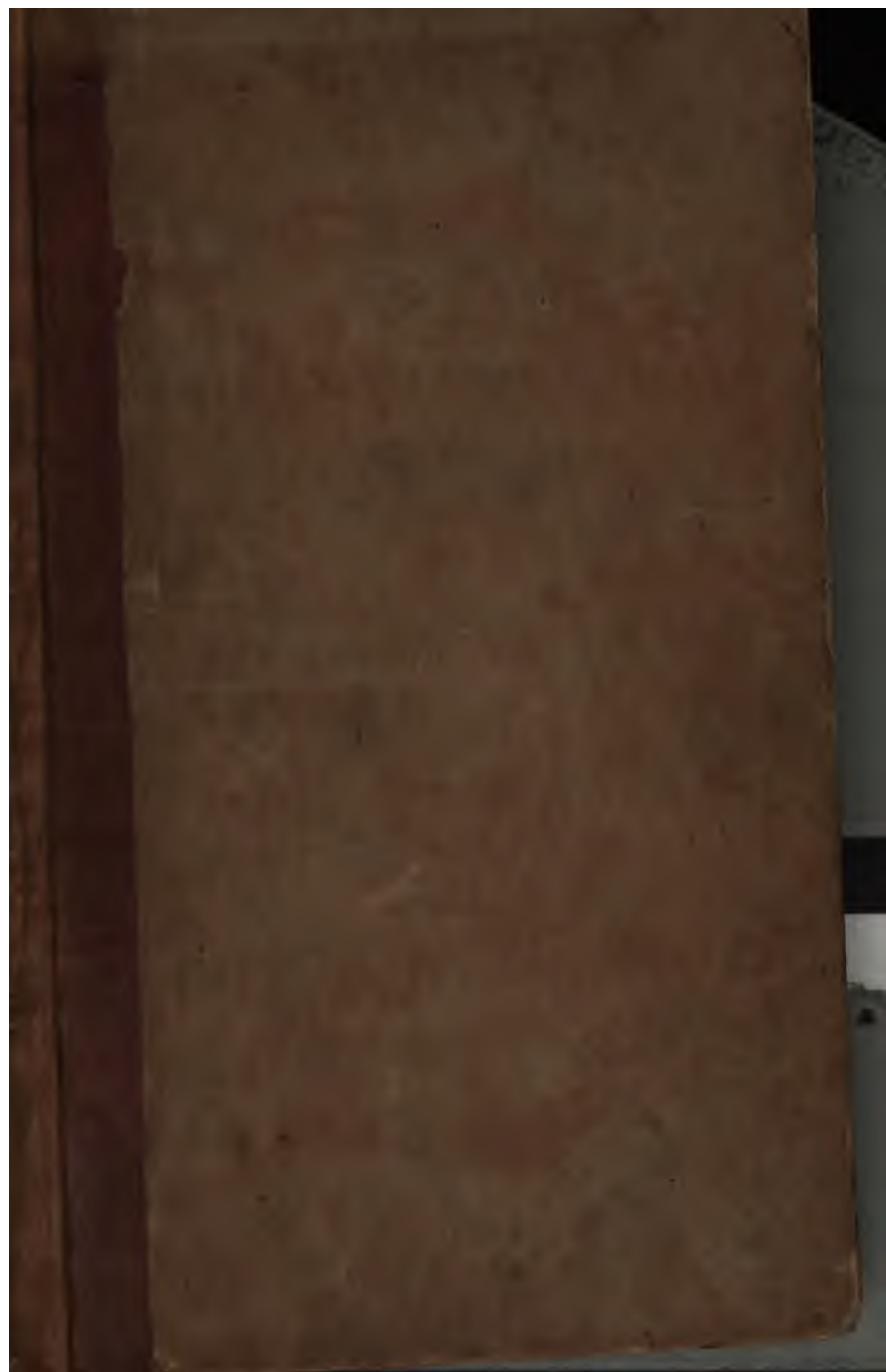
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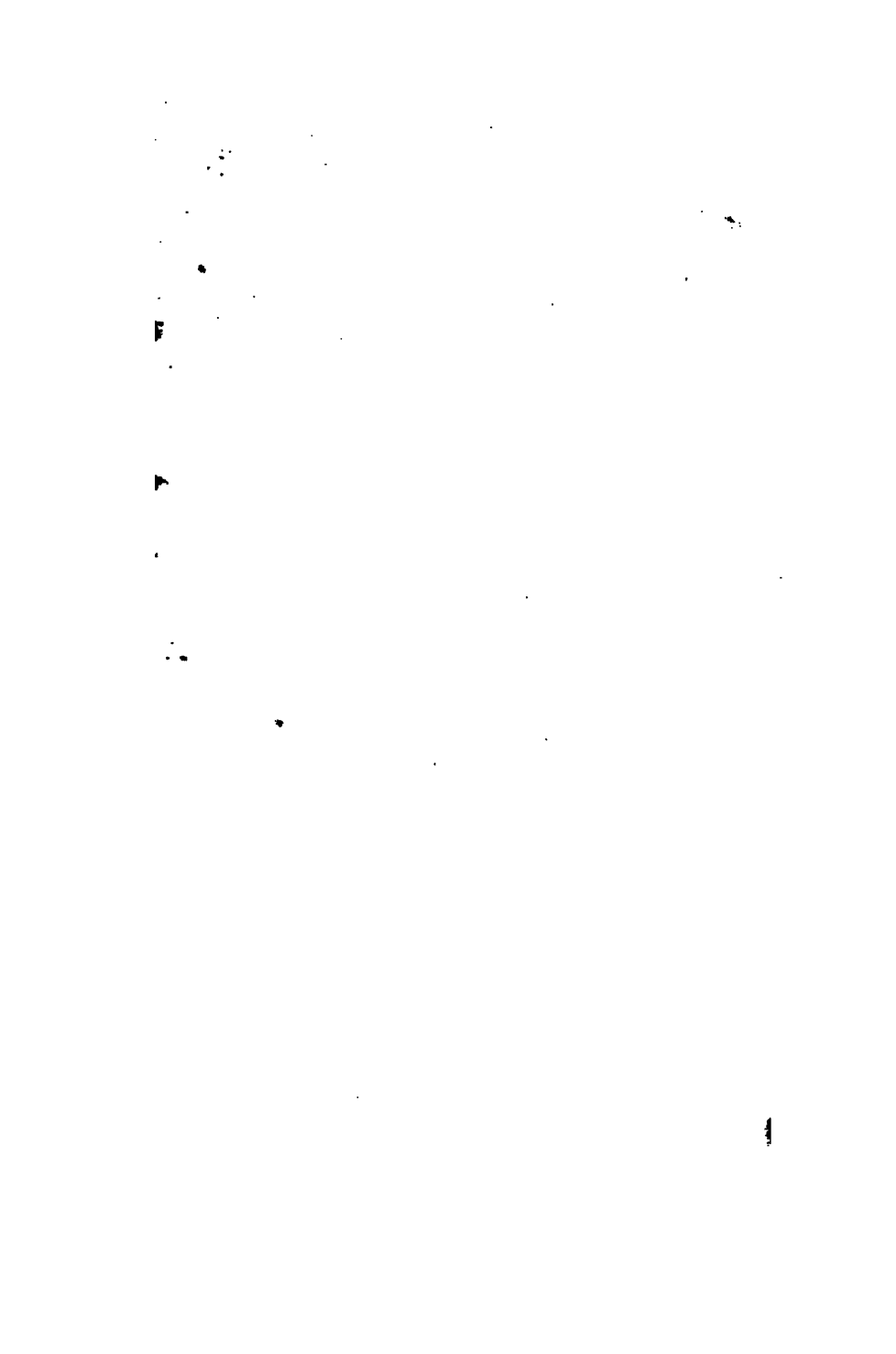
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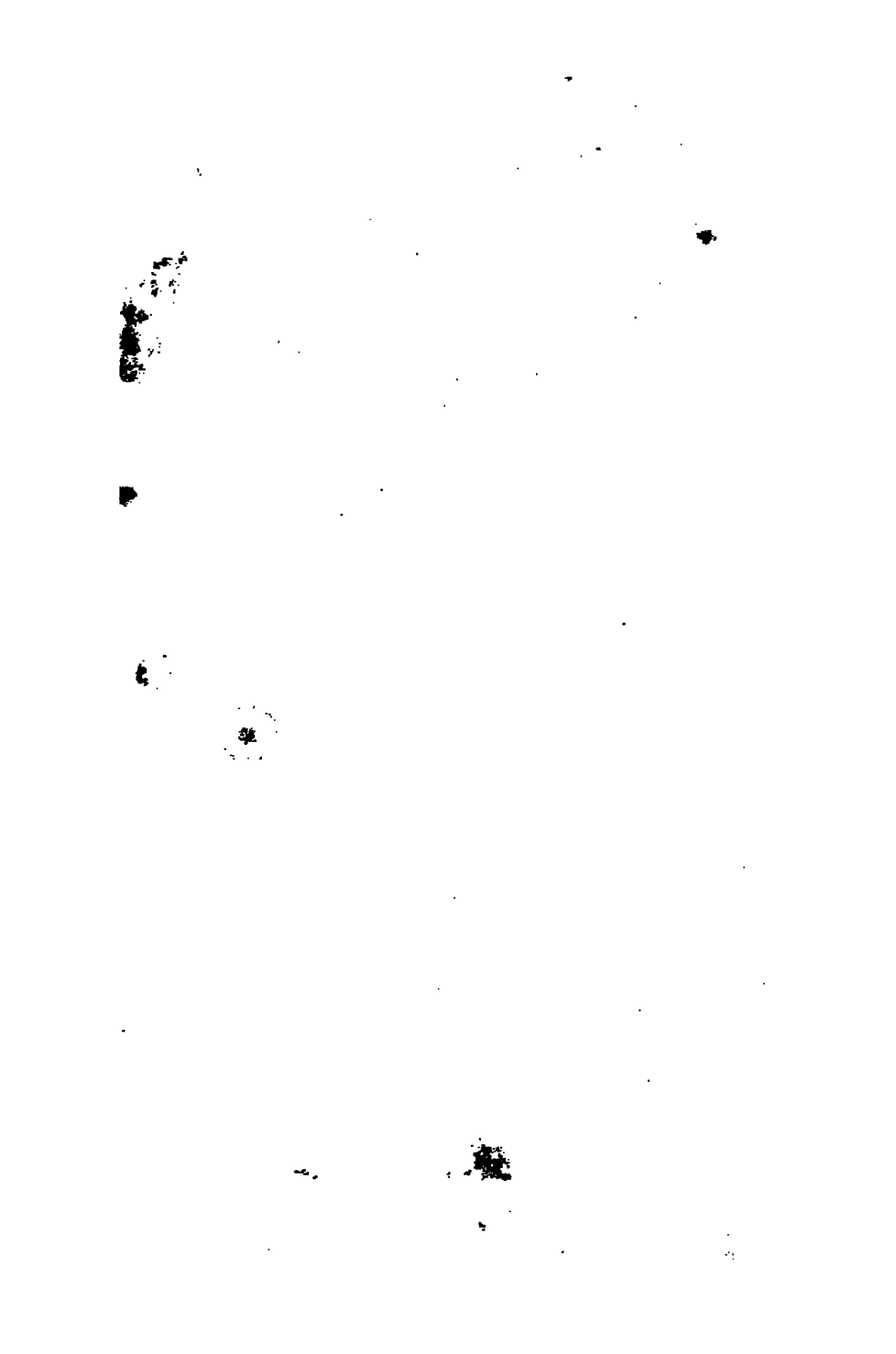


THE BEQUEST OF
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(CLASS OF 1882)
OF NEW YORK

1918









THE BOOK
OF
THE CONSTITUTION.

CONTAINING

THE CONSTITUTION OF THE UNITED STATES ;

A SYNOPSIS OF

THE SEVERAL STATE CONSTITUTIONS ;

WITH VARIOUS OTHER

IMPORTANT DOCUMENTS

AND USEFUL INFORMATION.

COMPILED

BY EDWIN WILLIAMS,
AUTHOR OF THE NEW YORK ANNUAL REGISTER, &c.

NEW YORK :
PETER HILL, 94, BROADWAY.

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INTRODUCTION.

The expediency of collecting into one volume all the documents that are given in the following pages, was first suggested to the editor, by the inconvenience which he himself experienced in the course of his own investigations, in referring to the different places where they are separately to be found. This inconvenience must be common to that very large number of readers who, in a country like ours, can scarcely be considered as possessing even a tolerable share of general knowledge, without being acquainted with the history and nature of the governments under which they live. To those whose professions or studies lead them more particularly to the investigation of constitutional questions, the difficulty of reference, to which allusion has been made, forms a subject of constant embarrassment and complaint. The object of the present volume is to present in one collection a synopsis of the constitutions of the different states, of the constitution of the United States, and of the documents that have been considered as the best explanations of their various provisions and relations.

For the outlines of the state constitutions, the editor is principally indebted to the *American Almanac*, of 1831.

Some of the documents, such as the proceedings and resolutions of the Virginia and Kentucky Legislatures, and of the Hartford Convention, were procured with considerable difficulty, having been but seldom republished since their first promulgation.

It was deemed expedient to include the old articles of confederation, which although superseded by the present constitution, are often referred to, as being the first successful attempt towards the formation of a regular and systematic Union, and as exhibiting most of the outlines of the present form of the general government.

The articles of confederacy arose from the necessities of the revolutionary contest, and formed the first Union and general government that had existed in the North American Colonies. All the former connexions that had existed between them, can be looked upon only as leagues or confederacies, such as might have existed between nations perfectly independent of each other. Of this nature was the confederacy formed amongst the New England Colonies, as early as the year 1643, for certain limited purposes, principally connected with the Indian wars. The last attempt for a more general union amongst the colonies, was made in 1754, but was never carried into full effect.

The difficulties which, shortly afterwards, arose between the colonies and the mother country, made it necessary that they should seek the aid of united councils. This necessity gave rise to the organization of the old Continental Congress, the first meeting of which took place on September 5th, 1774. In this Congress twelve colonies were represented by delegates. When it was ascertained that the pacific measures which had been adopted by Congress to resist the attempts which were made by the mother country to reduce them to unconditional submission, were not sufficiently energetic for the crisis, Congress reas-

sembled in May, 1775, and assumed the character of an independent nation to effect certain specified objects. The colonies ratified their proceedings, and conferred on that body, by resolutions passed in their primary assemblies, the powers of a national government, for the purposes conferred upon it.

By the declaration of independence, in 1776, the colonies held themselves out to the world, and made treaties, not as separate and independent sovereignties, but as one united nation, known in that capacity alone to foreign powers. The articles of confederation were agreed to in Congress, on the 15th November, 1777, but were not to be conclusive, until they were approved by the legislatures of all the states. Eleven of the states ratified them in 1778, one in 1779, and one state, the last of the thirteen, on the 1st March, 1781. Every one who is at all familiar with the history of the revolution, must have observed how inadequate were the powers which were at that time granted to the general government; how it was compelled to supplicate, when it should have had the power to command; and to recommend, when it ought to have acted. Nothing but the necessity of uniting against the assaults of a powerful invading enemy, would have held the states together under such a confederation, even for a single year, and the revolution was conducted to a successful issue, by the wisdom and valor of our forefathers, in spite of the feeble and ineffective government under which the struggle was made. It was intended to be merely temporary, until the restoration of more tranquil times should give a better opportunity to repair the political edifice, that had already begun to crumble to pieces. A government more energetic and able by the powers vested in it, to maintain its authority, without being entirely at the mercy of the separate states, was sought to be formed by the convention which formed the present constitution of the United States, and except its framers grossly deceived themselves, that object was attained, and the evils guarded against, of which there had been so bitter an experience. The present constitution was framed, instituted indeed for limited purposes, but for these purposes absolute and uncontrolled, except by its own appointed interpreter, the Supreme Court of the United States. The framers of the constitution,—men well acquainted with the ambiguities to which all language, however accurate and precise, was necessarily exposed, even when examined by the eye of good sense and patriotism, and not ignorant of the doubts that might be raised by weakness, by subtlety, or ambition,—were not so destitute of prudence as to suffer the constitution to pass from their hands, without declaring the manner in which, in the last resort, it was to be interpreted, nor to suffer that interpretation to rest upon the will of each particular state. Even allowing the theory assumed by some statesmen to be correct, that the government of the United States was the act of individual states, operating in their sovereign capacities, yet even in that case, as a common umpire has been appointed by the instrument of confederation, to whose decision all questions arising as to its construction were to be referred, the right of disunion by a single state would be entirely excluded. The analogy, so frequently instituted on this subject, by the strenuous advocates of nullification, between the case of our various state governments and that of sovereign independent nations, bound together by leagues, fails from the fact that an arbiter of disputes is expressly appointed by and amongst the former, whilst the

INTRODUCTION.

latter recognize no common tribunal of decision. In this point of view, the questions that have been lately discussed as to the manner of forming and ratifying the constitution, would seem to tend rather to the gratification of historical curiosity, than to be absolutely necessary to a right understanding or elucidation of the principles of the constitution.

The view of the constitution taken by Mr. Madison (its last surviving framer), in his admirable letter, which is given in this collection, and substantially by President Jackson, in his late Proclamation, appears to be acquiesced in by the great majority of their fellow citizens, who rightly consider that under any other construction of it the government would be impracticable. To preserve, however, the impartiality of this collection, and to render it useful as the depository of the arguments of both parties, several documents in favor of nullification have been given, together with the Virginia and Kentucky Resolutions; the true meaning and object of which are a mooted point amongst politicians. The address and resolutions of the *Hartford Convention*, the name of which is so familiar, and the objects and motives of which are so little known, to the mass of readers, have also been added.

It was considered unnecessary to insert the message of the President, of January 16, 1833, as its object seems to have been rather the recommendation of practical measures suited to the present emergency of affairs, than any new exposition of his opinions upon constitutional subjects, which had already been amply developed in his proclamation, and from which, in the message, there is no departure.

Appended to this collection, will be found tables of the votes cast for different candidates, as President and Vice President of the United States, since the adoption of the Constitution, and of the votes given in Congress from the several states on the tariff acts, since 1816.

The editor submits the whole collection to the public, as containing the largest mass of information, on Constitutional subjects, that has yet appeared in one volume, and as calculated to increase the information and facilitate the researches of the American citizen, in relation to the political institutions under which he lives. He thinks that it will be found not merely temporarily interesting, as suited to the present excitement of public feeling, but as permanently valuable, when patriotism and discretion shall have dissipated the clouds that now lower upon the prospects of our country.

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ARTICLES OF CONFEDERATION.

IN CONGRESS, JULY 8, 1778.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION

Between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Article 1. The style of this confederacy shall be, "**THE UNITED STATES OF AMERICA.**"

Art. 2. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

Art. 3. The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Art. 4. Sec. 1. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and egress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction, shall be laid by any state on the property of the United States, or either of them.

Sec. 2. If any person guilty of, or charged with treason, felony, or other high misdemeanor in any state shall flee from justice, and be found in any of the United States, he shall, upon the demand of the governor or executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Sec. 3. Full faith and credit shall be given in each of these states, to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

Art. 5. Sec. 1. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in congress on the first Monday in November, in every year, with a power reserved to each state to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

Sec. 2. No state shall be represented in congress by less than two, nor

more than seven members; and no person shall be capable of being a delegate for more than three years, in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or any other for his benefit, receives any salary, fees, or emolument, of any kind.

Sec. 3. Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of these states.

Sec. 4. In determining questions in the United States, in congress assembled, each state shall have one vote.

Sec. 5. Freedom of speech and debate in congress shall not be impeached or questioned in any court or place out of congress, and the members of congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

Art. 6. Sec. 1. No state, without the consent of the United States in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state, nor shall any person, holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state; nor shall the United States, in congress assembled, or any of them grant any title of nobility.

Sec. 2. No two or more states shall enter into any treaty, confederation, or alliance whatever, between them, without the consent of the United States in congress assembled, specifying, accurately, the purposes for which the same is to be entered into, and how long it shall continue.

Sec. 3. No state shall lay any imposts or duties which may interfere with any stipulations in treaties, entered into by the United States in congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by congress to the courts of France and Spain.

Sec. 4. No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in congress assembled, for the defence of such state, or its trade: nor shall any body of forces be kept up, by any state, in time of peace, except such number only as, in the judgment of the United States in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a regular and well disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, and in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

Sec. 5. No state shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of delay till the United States, in congress assembled, can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in congress assembled, shall determine otherwise.

Art. 7. When land forces are raised by any state for the common defence, all officers of or under the rank of colonel shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

Art. 8. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in congress assembled shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the United States in congress assembled.

Art. 9. Sec. 1. The United States in congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article, of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of congress shall be appointed a judge of any of the said courts.

Sec. 2. The United States in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more states concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority or lawful agent of any state in controversy with another, shall present a petition to congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as congress shall direct, shall, in the presence of congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient, or being present, shall refuse to strike, the com-

gress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress, for the security of the parties concerned: provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward." Provided also, that no state shall be deprived of territory for the benefit of the United States.

Sec. 3. All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdiction, as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

Sec. 4. The United States in congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the states: provided that the legislative right of any state, within its own limits, be not infringed or violated; establishing and regulating post offices from one state to another, throughout all the United States, and exacting such postage on papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States: making rules for the government and regulation of the said land and naval forces, and directing their operations.

Sec. 5. The United States in congress assembled, shall have authority to appoint a committee, to sit in the recess of congress to be denominated, "A Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted to build and equip a navy; to agree upon the number of land forces, to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state, which requisition shall be binding thereupon the legislature of each state shall appoint the regime:

officers, raise the men, clothe, arm, and equip them, in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled; but if the United States in congress assembled shall, on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip, as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled.

Sec. 6. The United States in congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter in any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in congress assembled.

Sec. 7. The congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state, on any question, shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

Art. 10. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the United States, in congress assembled, by the consent of nine states, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states, in the congress of the United States assembled, is requisite.

Art. 11. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this union; but no other colony shall be admitted into the same unless such admission be agreed to by nine states.

Art. 12. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

Art. 13. Every state shall abide by the determination of the United States in congress assembled, in all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislature of every state.

And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union, Know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in congress assembled, in all questions which by the said confederation are submitted to them; and that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In witness whereof, we have hereunto set our hands in congress.

Done at Philadelphia, in the state of Pennsylvania, the 9th day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

NEW HAMPSHIRE.—Josiah Bartlett, John Wentworth, Jr.

MASSACHUSETTS BAY.—John Hancock, Samuel Adams, Elbridge Gerry, Francis Dana, James Lovel, Samuel Holten.

RHODE ISLAND, &c.—William Ellery, Henry Marchant, John Collins.

CONNECTICUT.—Roger Sherman, Samuel Huntington, Oliver Wolcott, Titus Hosmer, Andrew Adams.

NEW YORK.—Jas. Duane, Fra. Lewis, Wm. Duer, Gouv. Morris.

NEW JERSEY.—Jno. Witherspoon, Nath. Scudder.

PENNSYLVANIA.—Robert Morris, Daniel Roberdeau, Jona. Bayard Smith, William Clingan, Joseph Reed.

DELAWARE.—Thos. McKean, John Dickinson, Nicholas Van Dyke.

MARYLAND.—John Hanson, Daniel Carroll.

VIRGINIA.—Richard Henry Lee, John Bannister, Thomas Adams, Jno. Harvie, Francis Lightfoot Lee.

NORTH CAROLINA.—John Penn, Cons. Harnett, Jno. Williams.

SOUTH CAROLINA.—Henry Laurens, William Henry Drayton, Jno. Mathews, Richard Hutson, Thos. Heyward, Jr.

GEORGIA.—Jno. Walton, Edwd. Telfair, Edwd. Langworthy.

CONSTITUTION

OF

THE UNITED STATES.

Copied from the Roll in the Department of State.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION I. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SEC. II. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole numbers of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years, after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SEC. III. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The Senate shall have the sole power to try all impeachments: when sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SEC. IV. The times, places, and manner of holding election for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SEC. V. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. VI. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SEC. VII. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the president of the United States: if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SEC. VIII. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or office thereof.

SEC. IX. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels

bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SEC. X. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bills of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[*The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no per-

* This clause is annulled. See amendments, Art. 13.

son have a majority, then from the five highest on the list, the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: A quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.]

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person, except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation or inability, both of the president, and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall at stated times receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

Sec. II. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may

happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SEC. III. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper: he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SEC. IV. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SEC. I. The judicial powers of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SEC. II. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizen of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SEC. III. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

CONSTITUTION OF THE

ARTICLE IV.

SEC. I. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SEC. II. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SEC. III. New states may be admitted by the congress into this union: but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SEC. IV. The United States shall guarantee to every state in the union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by congress: provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and agreements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof: and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby,

ing in the constitution or laws of any state to the contrary notwithstanding.

se senators and representatives before mentioned, and the members of several state legislatures, and all executive and judicial officers, of the United States and of the several states, shall be bound by their oath of affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office of public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states, shall be sufficient to establish this constitution between the states so ratifying the same.

done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON, President,
and Deputy from Virginia.

New Hampshire.

Langdon,
Nicholas Gilman.

Massachusetts.

Samuel Gorham,
John King.

Connecticut.

Samuel Johnson,
Roger Sherman.

New York.

Alexander Hamilton.

New Jersey.

William Livingston,
David Brearley,
William Patterson,
John Dayton.

Pennsylvania.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Gideon Ingersoll,
James Wilson,
Richard Morris.

Delaware.

George Reed,
Gunning Bedford, junr.
John Dickinson,
Richard Bassett,
Jacob Broom.

Maryland.

James M'Henry,
Daniel of St. Thomas Jenifer,
Daniel Carroll.

Virginia.

John Blair,
James Madison, junr.

North Carolina.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

South Carolina.

John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

Georgia.

William Few,
Abraham Baldwin.

Attest, William Jackson, Secretary.

AMENDMENTS

To the Constitution of the United States, ratified according to the provisions of the fifth article of the foregoing Constitution.

[Congress at its first session, begun and held in the city of New York, on Wednesday, the 4th of March, 1789, proposed to the legislatures of the several states, twelve amendments to the constitution, ten of which, only, were adopted. They are the ten first following.

The 11th Article of the amendments was proposed at the second session of the third congress, in 1794; and the 12th Article at the first session of the eighth congress in 1804. Both of which were afterwards adopted by the requisite number of states.]

ARTICLE I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ART. II. A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ART. III. No soldier shall in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ART. IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ART. V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ART. VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ART. VII. In suits of common-law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ART. VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ART. IX. The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ART. X. The powers not delegated to the United States, by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ART. XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ART. XII. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate:—The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted:—The person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

Note. Another amendment was proposed as Article xiii. at the second session of the eleventh congress, but not having been ratified by a sufficient number of the states, has not yet become valid, as a part of the constitution of the United States. It is erroneously given as a part of the constitution, in page 74, vol. I. Laws of the United States.

RESOLUTIONS AND ADDRESS TO CONGRESS.

Adopted by the Convention which framed the Constitution in 1787.

In Convention, Monday, September 17, 1787.

Present, the states of New Hampshire, Massachusetts, Connecticut, Mr. Hamilton, from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Resolved, That the preceding constitution be laid before the United States in congress assembled, and that it is the opinion of this convention, that it should afterwards be submitted to a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to, and ratifying the same, shall give notice thereof to the United States in congress assembled.

Resolved, That it is the opinion of this convention, that as soon as the conventions of nine states shall have ratified this constitution, the United States in congress assembled should fix a day on which electors should be appointed by the states which shall have ratified the same; and a day on which the electors should assemble to vote for the president, and the time and place for commencing proceedings under this constitution. That after such publication, the electors should be appointed, and the senators and representatives elected. That the electors should meet on the day fixed for the election of the president, and should transmit their votes certified, signed, sealed, and directed, as the constitution requires, to the secretary of the United States in congress assembled. That the senators and representatives should convene at the time and place assigned. That the senators should appoint a president of the senate for the sole purpose of receiving, opening, and counting the votes for president; and, that after he shall be chosen, the congress, together with the president, should, without delay, proceed to execute this constitution.

By the unanimous order of the convention.

GEORGE WASHINGTON, President.

WILLIAM JACKSON, Secretary.

In Convention, September 17, 1787.

SIR,—We have now the honor to submit to the consideration of the United States in congress assembled, that constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired, that the power of making war, peace, and treaties, that of levying money, and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the union; but the impropriety of delegating such extensive trust to one body of men is evident. Hence results the necessity of a different organization.

It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of

the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several states, as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject, we kept steadily in our view, that which appears to us the greatest interest of every true American, the Consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our National Existence. This important consideration, seriously and deeply impressed on our minds, led each state in the convention, to be less rigid on points of inferior magnitude, than might have been otherwise expected: and thus the constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every state, is not, perhaps, to be expected: but each will, doubtless, consider, that had her interests been alone consulted, the consequences might have been particularly disagreeable to others. That it is liable to as few exceptions, as could reasonably have been expected, we hope and believe. That it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish. With great respect, we have the honor to be, sir,

Your excellency's most obedient and humble servant,

GEORGE WASHINGTON, President.

By unanimous consent of the Convention.

His excellency the President of Congress.

Resolution of Congress recommending the appointment of State Conventions, to consider the preceding Constitution.

The United States in Congress assembled, Friday Sept. 28, 1787. Present, New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, and Georgia, and from Maryland, Mr. Ross.

Congress having received the report of the convention lately assembled in Philadelphia,

Resolved, unanimously, that the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates, chosen in each state by the people thereof, in conformity to the resolves of the convention, made and provided in that case.

CHARLES THOMSON, Secretary.

STATE CONSTITUTIONS.

A SYNOPSIS

OF THE PRINCIPAL FEATURES OF THE CONSTITUTION OF EACH OF THE UNITED STATES.

MAINE.

THE Constitution of this state was formed 1819, and went into operation in 1820.

The legislative power is vested in a Senate and a House of Representatives, both elected annually by the people, on the second Monday in September. These two bodies are together styled *The Legislature of Maine*.

The number of representatives cannot be less than 100, nor more than 200. A town having 1,500 inhabitants is entitled to send 1 representative; having 3,750, 2; 6,775, 3; 10,500, 4; 15,000, 5; 20,250, 6; 26,250, 7; but no town can ever be entitled to more than 7 representatives.—The number of senators cannot be less than 20, nor more than 31.

The Legislature meets (at *Augusta*) annually, on the first Wednesday in January.

The executive power is vested in a Governor, who is elected annually by the people, on the second Monday in September, and his term of office commences on the first Wednesday in January. A Council of seven members is elected annually on the first Wednesday in January, by joint ballot of the senators and representatives, to advise the governor in the executive part of government.

The right of suffrage is granted to every male citizen aged 21 years or upwards (excepting paupers, persons under guardianship, and Indians not taxed), having had his residence established in the state for the term of three months next preceding an election.

The judicial power is vested in a Supreme Judicial Court, and such other courts as the legislature may, from time to time, establish. All the judges are appointed by the governor, with the advice and consent of the council; and they hold their offices during good behavior, but not beyond the age of 70 years.

NEW HAMPSHIRE.

A Constitution was established in 1784; and in 1792, this Constitution was altered and amended, by a convention of delegates held at Concord, and is now in force.

The legislative power is vested in a Senate and House of Representatives, which, together, are styled, *The General Court of New Hampshire*.

Every town, or incorporated township, having 150 ratable polls, may send one representative; and for every 300 additional polls, it is entitled to an additional representative.

The Senate consists of 12 members, who are chosen by the people in districts.

The executive power is vested in a Governor and a Council, which consists of five members.

The governor, council, senators, and representatives, are all elected annually, by the people, on the second Tuesday in March; and their term of service commences on the first Wednesday in June.

The General Court meets annually (at *Concord*) on the first Wednesday in June.

The right of suffrage is granted to every male inhabitant of 21 years of age, excepting paupers and persons excused from paying taxes at their own request.

The judiciary power is vested in a Superior Court and a Court of Common Pleas. The judges are appointed by the governor and council, and hold their offices during good behavior, but not beyond the age of 70 years.

VERMONT.

The first Constitution of this state was formed in 1777; the one now in operation was adopted on the 4th of July, 1793.

The legislative power is vested in a single body, a House of Representatives, elected annually, on the first Tuesday in September, every town in the state being entitled to send one representative. The representatives meet (at *Montpelier*) annually on the second Thursday of the October succeeding their election, and are styled *The General Assembly of the State of Vermont*.

The executive power is vested in a Governor, Lieutenant Governor, and a Council of 12 persons, who are all chosen annually by the free-men on the first Tuesday in September, and their term of office commences on the second Thursday in October. They are empowered to commission all officers; to sit as judges to consider and determine on impeachments; to prepare and lay before the General Assembly such business as shall appear to them necessary; and have power to revise and propose amendments to the laws passed by the House of Representatives.

The Constitution grants the right of suffrage to every man of the full age of 21 years, who has resided in the state for the space of one whole year, next before the election of representatives, and is of quiet and peaceable behavior.

The judiciary power is vested in a Supreme Court consisting of three judges; and of a County Court of three judges for each county. The judges of the Supreme, County, and Probate Courts, sheriffs, and justices of the peace, are elected annually by the General Assembly.

A Council of Censors, consisting of 13 persons, are chosen every seven years (first elected in 1799) on the last Wednesday in March, and meet on the first Wednesday in June. Their duty is to inquire whether the Constitution has been preserved inviolate; whether the legislative and executive branches of government have performed their duty as guardians of the people; whether the public taxes have been justly laid and collected; in what manner the public moneys have been disposed of; and whether the laws have been duly executed.

MASSACHUSETTS.

The Constitution of this state was formed in 1780, and amended in 1821.

The legislative power is vested in a Senate and House of Representatives, which together are styled *The General Court of Massachusetts*.

The members of the House of Representatives are elected annually on the second Monday in November. Every corporate town having 150 ratable polls may elect one representative, and another for every additional 225 ratable polls.

The Senate consists of 40 members, who are chosen, by districts, annually, on the second Monday in November.

The supreme executive magistrate is styled the *Governor of the Commonwealth of Massachusetts*, and has the title of "*His Excellency*." The Governor is elected annually by the people on the second Monday in November, and at the same time a Lieutenant Governor is chosen, who has the title of "*His Honor*." The Governor is assisted in the executive part of government, by a Council of nine members, who are chosen by the joint ballot of the Senators and Representatives, from the Senators; and in case the persons elected, or any of them, decline the appointment, the deficiency is supplied from among the people at large.

The General Court meets (at *Boston*) on the first Wednesday of January.

The right of suffrage is granted to every male citizen, 21 years of age and upwards (excepting paupers and persons under guardianship), who has resided within the commonwealth one year, and within the town or district in which he may claim a right to vote, six calendar months next preceding any election, and who has paid a state or county tax, assessed upon him within two years next preceding such election; and also every citizen who may be by law exempted from taxation, and who may be in all other respects qualified as above mentioned.

The judiciary is vested in a Supreme Court, a Court of Common Pleas, and such other courts as the Legislature may establish. The judges are appointed by the Governor by and with the advice and consent of the Council, and hold their offices during good behavior.

RHODE ISLAND.

The government of this state is founded on the provisions of the Charter granted to the colony by Charles II., in 1663; and this is the only state in the Union which is without a written Constitution.

The legislative power is vested in a *General Assembly*, consisting of a Senate and a House of Representatives.

The House of Representatives consists of 72 members, 6 from Newport, 4 from each of the towns of Providence, Portsmouth, and Warwick, and two from each of the other towns in the State; and they are elected semi-annually in April and August.

The Senate consists of 10 members, who are elected annually in April.

The executive power is vested in a Governor, who is elected annually in April. A Lieutenant Governor is also elected, on whom the executive duties devolve in case of the office of governor being vacated.

The General Assembly meets four times a year (at *Newport*); on the first Wednesday in May (the commencement of the political year), and by adjournment, at the same place, in June. It meets on the last Wednesday in October, alternately at *Providence*, and *South Kingstown*; and by adjournment, in January, at *East Greenwich*, *Bristol*, or *Providence*.

The judges are appointed annually by the General Assembly.

CONNECTICUT.

The Charter granted in 1662 by Charles II., formed the basis of the government of Connecticut till 1818, when the present Constitution was framed.

The legislative power is vested in a Senate and House of Representatives, which together are styled the *General Assembly*.

The members of the House of Representatives are chosen by the different towns in the state: the more ancient towns, the majority of the whole number, send each two representatives; the rest only one each. The present number is 208.

The Senate must consist of not less than 18, nor more than 24 members, who are chosen by districts. The present number is 21.

The executive power is vested in a Governor. A Lieutenant Governor is also chosen, who is president of the Senate, and on whom the duties of the governor devolve in case of his death, resignation, or absence.

The representatives, senators, governor, and lieutenant governor, are all elected annually by the people on the first Monday in April.

The General Assembly has one stated session every year, on the first Wednesday in May, alternately at Hartford (1833) and at New Haven (1834.)

"Every white male citizen of the United States, who shall have gained a settlement in this state, attained the age of 21 years, and resided in the town in which he may offer himself to be admitted to the privilege of an elector, at least six months preceding, and have a freehold estate of the yearly value of seven dollars, in this state; or having been enrolled in the militia, shall have performed military duty therein for the term of one year next preceding the time he shall offer himself for admission, or being liable thereto, shall have been, by authority of law, excused therefrom; or shall have paid a state tax within the year next preceding the time he shall present himself for such admission, and shall sustain a good moral character, shall, on the taking such an oath as may be prescribed by law, be an elector."

The judicial power is vested in a Supreme Court of Errors, a Superior Court, and such inferior courts as the General Assembly may, from time to time, establish. The judges are appointed by the General Assembly; and those of the Supreme and Superior Courts hold their offices during good behavior; but not beyond the age of 70 years.

No person is compelled to join, or support, or to be classed with, or associated to, any congregation, church, or religious association. But every person may be compelled to pay his proportion of the expenses of the society to which he may belong: he may, however, separate himself from the society by leaving a written notice of his wish with the clerk of such society.

NEW YORK.

The present Constitution of the state of New York was formed in 1821.

The executive power is vested in a Governor, who is elected by the people every two years; and at the same time, a Lieutenant Governor is also chosen, who is President of the Senate, and on whom, in case of the impeachment, resignation, death, or absence of the Governor, from office, the powers and duties of Governor devolve.

The legislative power is vested in a Senate of 32 members, who are chosen for four years, and an Assembly, of 128 members, who are elected annually; and these bodies united are styled the *Legislature*.

For the election of the senators, the state is divided into eight districts, each being entitled to choose four senators, one of whom is elected every year. The members of the Assembly are chosen by counties, and are apportioned according to population.

The election of governor, lieutenant governor, senators, and members of the Assembly, is held at present on the first Monday in November, and continues three days; or at such time in the month of October or November, as the legislature may by law provide.

The political year commences on the first day of January; and the legislature meets annually (at *Albany*) on the first Tuesday in January, unless a different day is appointed by law.

The Constitution grants the right of suffrage, in the election of public officers, to every white male citizen, of the age of 21 years, who has been an inhabitant of the state one year next preceding any election, and, for the preceding six months, a resident in the county where he may offer his vote; but no man of color is entitled to vote unless he is possessed of a freehold estate of the value of \$250, without any incumbrance.

The chancellor and judges are appointed by the Governor, with the consent of the Senate. The chancellor and justices of the Supreme and Circuit Courts hold their offices during good behavior, or until they attain the age of 60 years. The judges of the County Courts, or Courts of Common Pleas, are appointed for a term of five years.

NEW JERSEY.

The Constitution of New Jersey was formed in 1776; and no revision of it has since taken place, except that the Legislature has undertaken to explain its provisions in particular parts. The government is vested in a Governor, Legislative Council, and General Assembly; and these bodies united are styled the *Legislature*.

The members of the Legislative Council and of the General Assembly, are elected annually, on the second Tuesday in October.

The number of members of the Legislative Council is 14, one being elected by each county in the state. The General Assembly has consisted, for a number of years past, of 43 members; but by a law enacted in 1829, seven additional members were added; and it now consists of 50 members, apportioned among the counties as follows: Bergen 3, Essex 5, Morris 4, Sussex 3, Warren 3, Hunterdon 5, Somerset 3, Middlesex 4, Monmouth 4, Burlington 5, Gloucester 4, Salem 3, Cumberland 3, and Cape May 1.

The Legislature meets annually (at *Trenton*) on the fourth Tuesday in October.

The governor is chosen annually by a joint vote of the Council and Assembly, at their first joint meeting after each annual election. The Governor is President of the Council; and the Council also elect from their own body, at their first annual meeting, a vice-president, who acts in the place of the Governor in his absence. The Governor and Council form a Court of appeals, in the last resort in all causes of law; and they possess the power of granting pardon to criminals after condemnation.

The Constitution grants the right of suffrage to "all persons of full age who are worth 50 pounds proclamation money, clear estate in the same, and have resided within the county in which they claim to vote for twelve months immediately preceding the election." [The Legislature has declared by law, that every white male inhabitant, who shall be over the age of 21 years, and shall have paid a tax, shall be considered worth fifty pounds, and shall be entitled to vote;—and by another legislative act, females and negroes are prohibited from voting.]

The judges are appointed by the Legislature; those of the Supreme Court for a term of seven years, and those of the inferior courts, for five years, both are capable of being reappointed.

PENNSYLVANIA.

The first Constitution of Pennsylvania was adopted in 1776; the present Constitution in 1790.

The legislative power is vested in a *General Assembly*, consisting of a Senate and House of Representatives.

The Representatives are elected annually on the second Tuesday in October, by the citizens of Philadelphia and of the several counties, apportioned according to the number of taxable inhabitants. The number cannot be less than 60, nor more than 100.

The senators are chosen for four years, one fourth being elected annually, at the time of the election of the representatives. Their number cannot be greater than one third, nor less than one fourth of the number of the representatives.

[In 1829, it was enacted by the General Assembly, "that until the next enumeration of taxable inhabitants, and an apportionment thereon, the senate, at a ratio of 7,700 (taxable inhabitants), shall consist of 33 members;" and "the House of Representatives, at a ratio of 2,544, shall consist of 100 members."—The following statement shows the representative number, and the number of members of the legislature, at different periods:

	<i>Ratio.</i>	<i>Senators.</i>		<i>Ratio.</i>	<i>Representa.</i>
1793 to 1800		24			78
1800 to 1807	4,670	25		1,350	86
1807 to 1814	4,500	31		1,500	95
1814 to 1821	5,250	31		1,750	97
1821 to 1828	6,300	33		2,100	100
1828 to 1835	7,700	33		2,544	100.]

The executive power is vested in a Governor, who is elected by the people on the 2d Tuesday in October, and who holds his office during three years, from the third Tuesday in December next following his

election; and he cannot hold the office more than 9 years, in any term of 12 years.

The General Assembly meets annually (at *Harrisburg*) on the first Tuesday in December, unless sooner convened by the Governor.

The judicial power is vested in a Supreme Court, in Courts of oyer and terminer and jail delivery, in Courts of Common Pleas, an Orphans' Court, a Register's Court, a Court of Quarter Sessions of the Peace for each county; and in such other courts as the legislature may from time to time establish. The judges of the Supreme Court and the several Courts of Common Pleas, are appointed by the Governor, and hold their offices during good behavior.

The right of suffrage is possessed by every freeman of the age of 21 years, who has resided in the state two years next preceding an election, and within that time paid a state or county tax, assessed at least six months before the election.

DELAWARE.

Constitution formed in 1792, and amended 1831.

The Legislature is styled the *General Assembly*, and consists of a Senate and House of Representatives.

The senators are nine in number, namely: three from each county, and are elected for a term of four years. The representatives are elected for a term of two years, and are 21 in number, 7 from each county.

The General Assembly meets (at *Dover*), *biennially*, on the first Tuesday in January, unless sooner convened by the Governor.

The general election is held *biennially*, on the second Tuesday in November.

The executive power is vested in a Governor, who is elected by the people for a term of four years, and is not eligible for a second term.

The judicial power is vested in a Court of Errors and Appeals, a Superior Court, a Court of Chancery, an Orphans' Court, a Court of Oyer and Terminer, a Court of General Sessions of the peace, and jail delivery, a Register's Court, Justices of the Peace, and such other courts as the General Assembly may (by a vote of two thirds of each house) establish.

The right of suffrage is granted to every white male citizen, of the age of 21 years or upwards, having resided in the state one year, next before the election, and the last month in the county where he votes; and having within two years paid a county tax. Also, to every free white male over 21, and under 22 years of age, having resided, as aforesaid, without payment of any tax.

MARYLAND.

The Constitution of this state was first formed in 1776; since which time many amendments have been made.

The legislative power is vested in a Senate, consisting of 15 members, and a House of Delegates, consisting of 80 members; and these two branches united are styled *The General Assembly of Maryland*.

The members of the House of Delegates, four from each county, and two each from the cities of Baltimore and Annapolis, are elected annually by the people, on the first Monday in October; and the members of the Senate are elected every fifth year on the third Monday in September, at Annapolis, by electors who are chosen by

the people on the first Monday of the same month of September. These electors choose by ballot 9 senators from the Western Shore, and 6 from the Eastern, who hold their offices five years.

The executive power is vested in a Governor, who is elected annually on the first Monday in January, by a joint ballot of both Houses of the General Assembly. No one can hold the office of governor more than three years successively, nor be eligible as governor until the expiration of four years after he has been out of that office. The governor is assisted by a Council of five members, who are chosen annually by a joint ballot of the Senate and House of Delegates.

The General Assembly meets annually (at *Annapolis*) on the last Monday in December. The Council of the Governor is elected on the first Tuesday in January; the governor nominates to office, and the council appoints.

The Constitution grants the right of suffrage to every free, white, male citizen, above 21 years of age, having resided twelve months within the state, and six months in the county, or in the city of *Annapolis* or *Baltimore*, next preceding the election at which he offers to vote.

The chancellor and judges are nominated by the governor, and appointed by the council; and they hold their offices during good behavior.

VIRGINIA.

The old Constitution of this state was formed in 1776, and continued in operation until 1830, when the present amended Constitution was formed by a convention, and accepted by the people.

By this Constitution the legislative power is vested in a Senate and a House of Delegates, which are together styled, *The General Assembly of Virginia*.

The House of Delegates consists of 134 members, chosen annually; 31 from the 26 counties west of the Alleghany mountains; 25 from the 14 counties between the Alleghany mountains and Blue Ridge, 42 from the 29 counties east of the Blue Ridge, and above tide-water; and 36 from the counties, cities, towns, and boroughs lying upon tide-water.

The Senate consists of 32 members, 13 from the counties west of the Blue Ridge, and 19 from the counties, cities, towns, and boroughs east thereof. The senators are elected for four years; and the seats of one-fourth of them are vacated every year. In all elections to any office or place of trust, honor, or profit, the votes are given openly, or *viva voce*, and not by ballot.

A reapportionment for representation in both houses, is to take place every ten years, commencing in 1841, until which time there is to be no change in the number of delegates and senators from the several divisions; and after 1841, the number of delegates is never to exceed 150; nor that of the senators, 36.

The time of election of Delegates is fixed by the General Assembly, and at present takes place in April.

The General Assembly meets annually (at *Richmond*), on the first Monday in December.

The executive power is vested in a Governor elected by the joint vote of the two houses of the General Assembly. He holds his office three years, commencing on the 1st of January next succeeding his election, or on such other day as may be from time to time prescribed by law;

and he is ineligible for the three years next after the expiration of his term of office.

There is a Council of State, consisting of three members elected for three years, by the joint vote of the two houses; the seat of one being vacated annually. The senior counsellor is lieutenant governor.

The judges of the Supreme Court of Appeals and of the Superior Courts are elected by a joint vote of both houses of the General Assembly, and hold their offices during good behavior; or until removed by a concurrent vote of both houses; but two-thirds of the members present must concur in such vote, and the cause of removal be entered on the journals of each house.

The right of suffrage is extended to every white male citizen of the commonwealth, resident therein, aged 21 years and upwards, who is qualified to exercise the right of suffrage according to the former Constitution and laws;—or who owns a freehold of the value of \$25; or who has a joint interest to the amount of \$25 in a freehold;—or who has a life estate in, or reversionary title to, land of the value of \$50, having had been so possessed for six months; or who shall own and be in the actual occupation of a leasehold estate, having the title recorded two months before he shall offer to vote—of a term originally not less than five years, and of the annual value or rent of \$200;—or who for twelve months before offering to vote, has been a house-keeper and head of a family, and shall have been assessed with a part of the revenue of the commonwealth within the preceding year, and actually paid the same.

NORTH CAROLINA.

The Constitution of North Carolina was agreed to and resolved upon, by representatives chosen for that purpose, at Halifax, December 18, 1776.

The legislative authority is vested in a body, styled *The General Assembly*, consisting of a Senate and a House of Commons, both elected annually by the people. One senator and two members of the House of Commons are sent from each of the 62 counties; and one of the latter also from each of the towns of Edenton, Newbern, Wilmington, Salisbury, Hillsborough, and Halifax.

The chief executive officer is the Governor, who is chosen annually by a joint vote of the two Houses; and he is eligible for 3 years only in 6. He is assisted by an executive Council of seven members, chosen annually by a joint vote of the two Houses. In case of the death of the Governor, his duties devolve upon the Speaker of the Senate.

The judges of the Supreme and Superior Courts are appointed by a joint vote of the two Houses, and hold their offices during good behavior.

The Constitution grants the right of voting for members of the House of Commons to all freemen of the age of 21 years, who have been inhabitants of the state 12 months immediately preceding the election; but in order to vote for a senator, a freeman must be possessed of a freehold of 50 acres of land.

The time of electing the members of the General Assembly is appointed by the legislature, and commonly takes place in the month of August.

The Assembly meets annually (at *Raleigh*), and usually on the 2d Monday in November; and the governor is commonly chosen in December.

SOUTH CAROLINA.

The first Constitution of this state was formed in 1775; the present Constitution was adopted in 1790.

The legislative authority is vested in a *General Assembly*, consisting of a Senate and a House of Representatives.

The Senate consists of 45 members, who are elected by districts for four years, one half being chosen biennially.

The House of Representatives consist of 124 members, who are apportioned among the several districts, according to the number of white inhabitants and taxation; and are elected for two years. The representatives and one half of the senators are chosen every second year, on the second Monday in October and the day following.

The executive power is vested in a Governor, who is elected for two years, by a joint vote of the Senate and House of Representatives, at every first meeting of the House of Representatives. A governor after having performed the duties of the office for two years, cannot be re-elected till after the expiration of four years.

At the time of the election of Governor, a Lieutenant Governor is chosen in the same manner, and for the same period.

The General Assembly meets annually (at *Columbia*), on the fourth Monday in November.

The Chancellor and Judges are appointed by the joint ballot of the Senate and House of Representatives, and hold their offices during good behavior.

The Constitution grants the right of suffrage to every free white, male citizen, of the age of 21 years, having resided in the state two years previous to the day of election, and having been possessed of a freehold of 50 acres of land, or a town lot, at least six months before such election, or (not having such freehold or town lot) having been a resident in the election district in which he offers his vote, six months before said election, and having paid a tax the preceding year of 3s. sterling towards the support of the government.

GEORGIA.

The first Constitution of Georgia was formed in 1777; a second, in 1785; and a third, the one now in operation, in 1798.

The legislative power is vested in a Senate and House of Representatives, which together are styled *The General Assembly*.

The members of both houses are chosen annually on the first Monday in October. One senator is elected for each county, and the number of representatives is in proportion to population, including three-fifths of all the people of color; but each county is entitled to at least one, and no one to more than four members.

The executive power is vested in a Governor, who was formerly elected by the General Assembly; but he is now (and ever since 1824) elected by the people on the first Monday in October; and he holds the office for two years.

The General Assembly meets (at *Milledgeville*) on the first Monday in November; unless convened at another time by the Governor.

The Constitution grants the right of suffrage to all "citizens and inhabitants who have attained the age of 21 years, and have paid all the

taxes which may have been required of them, and which they may have had opportunity of paying, agreeably to law, for the year preceding the election, and shall have resided six months within the county."

The judicial power is vested in a Superior Court and in such inferior jurisdictions as the legislature may, from time to time, ordain and establish; and the superior and inferior courts sit twice in each county every year. The judges of the Superior Court are elected by the legislature for three years; the justices of the inferior courts, and justices of the peace, are elected quadriennially by the people; and the clerks of the superior and inferior courts biennially.

ALABAMA.

The legislative power is vested in two branches, a Senate and House of Representatives, which together are styled *The General Assembly of the State of Alabama*.

The representatives are elected annually, and are apportioned among the different counties in proportion to the white population; the whole number cannot exceed 100, nor fall short of 60. The senators are elected for three years, and one-third of them are chose every year. Their number cannot be more than one-third, nor less than one-fourth of the number of representatives.

The executive power is vested in a Governor, who is elected by the people for two years; and is eligible 4 years out of 6.

The representatives and one-third of the senators are elected annually on the first Monday in August and the day following; and the governor is elected biennially at the same time.

The General Assembly meets annually (at *Tuscaloosa*), on the fourth Monday in October.

The right of suffrage is possessed by every white, male citizen of 21 years of age, who has resided within the state one year preceding an election, and the last three months within the county, city, or town, in which he offers his vote.

The judicial power is vested in one Supreme Court, in Circuit Courts, and such inferior courts as the General Assembly may, from time to time, direct and establish. The judges, after November in 1833, are to be elected by a joint vote of both Houses of the General Assembly, every six years.

MISSISSIPPI.

The Constitution of this state was formed at the town of Washington, in August, 1817.

The legislative power is vested in a Senate and a House of Representatives, which are together styled *The General Assembly of the State of Mississippi*.

The representatives are elected annually on the first Monday in August, in the ratio of one to every 3,000 white inhabitants. Each county, however, is entitled to one; and the present whole number is 33. According to the Constitution, when the number of white inhabitants exceeds 80,000, the number of representatives cannot be less than 35, nor more than 100.

The members of the Senate are elected for three years, one-third being chosen annually. Their number cannot be less than one-fourth, nor more than one-third of the whole number of representatives.

The executive power is vested in a Governor, who is elected by the

people, for two years, on the first Monday in August. At every election of Governor, a Lieutenant Governor is also chosen, who is President of the Senate, and on whom the executive duties devolve in case of the death, resignation, or absence of the governor.

The General Assembly meets (at *Jackson*), annually on the first Monday in November.

The right of suffrage is granted to every free, white, male citizen of the United States, of the age of 21 years or upwards, who has resided within this state one year next preceding an election, and the last six months within the county, city, or town in which he offers to vote, and is enrolled in the militia thereof, unless exempted by law from military service; or having the aforesaid qualifications of citizenship and residence, has paid a state or county tax.

The judicial power is vested in a Supreme Court, and such superior and inferior courts of law and equity, as the legislature may from time to time establish. The judges of the several courts are elected by the General Assembly, and hold their offices during good behavior, till the age of 65 years.

LOUISIANA.

The Constitution of this state was formed in 1812.

The legislative power is vested in a Senate and House of Representatives, both together styled *The General Assembly of the State of Louisiana*.

The representatives are elected for two years on the first Monday, Tuesday, and Wednesday in July. Their number cannot be less than 25, nor more than 50; and they are apportioned according to the number of electors, as ascertained by enumeration every 4 years.

The members of the Senate are elected for four years; one half being chosen every two years, at the time of the election of the representatives. The state is divided into 16 senatorial districts, in each of which one senator is chosen.

The executive power is vested in a Governor, who is elected for the term of four years. The people give their votes for a governor at the time and place of voting for representatives and senators; and on the second day of the succeeding session of the General Assembly, the two Houses, by a joint ballot, elect for Governor, one of the two candidates who have the greatest number of votes. The governor's term of office commences on the fourth Monday succeeding his election.

The General Assembly meets (since 1829, at *Donaldson*, or *Donaldsonville*) annually, on the first Monday in January, except in the years of the election of President of the United States, when it meets on the 3d Monday in November.

The right of suffrage is possessed by every white male citizen of the United States, of the age of 21 years, who has resided in the county in which he offers to vote one year next preceding the election, and who in the last six months prior to said election has paid a state tax.

The judiciary power is vested in a Supreme Court, which possesses appellate jurisdiction only, and such inferior courts as the legislature may establish. The judges are appointed by the Governor, with the advice and consent of the Senate, and hold their offices during good behavior.

TENNESSEE.

The Constitution of this state was formed at Knoxville, in 1796.

The legislative authority is vested in a *General Assembly*, consisting of a Senate and House of Representatives; and the members of both houses are elected biennially on the first Thursday and Friday in August.

The number of representatives is 60, who are apportioned among the different counties according to the number of taxable inhabitants. The number of senators cannot be less than one-third, nor more than one-half of the number of representatives.

The executive power is vested in a Governor, who is elected at the same time with the senators and representatives; and who holds his office for the term of two years, but is not eligible more than 6 years in any term of 8.

The General Assembly meets (at *Nashville*) biennially, on the third Monday in September, next following the election; and it may be called together, if necessary, at other times by the governor.

The right of suffrage is granted to every freeman of the age of 21 years, possessing a freehold in the county where he offers his vote, and to every freeman who has been an inhabitant of any one county in the state six months immediately preceding the day of election.

The judiciary power is vested in such superior and inferior courts, as the legislature may from time to time direct and establish. The judges are appointed by a joint ballot of both Houses, and hold their offices during good behavior.

KENTUCKY.

On the separation of Kentucky from Virginia, in 1790, a Constitution was adopted which continued in force till 1799, when a new one was formed instead of it; and this is now in force.

The legislative power is vested in a Senate and House of Representatives, which together are styled *The General Assembly of the Commonwealth of Kentucky*.

The representatives are elected annually, and are apportioned, every four years, among the different counties according to the number of electors. Their present number is 100, which is the highest number that the Constitution authorizes; 58 being the lowest.

The senators are elected for four years, one quarter of them being chosen annually. Their present number is 38; and they cannot exceed this number, nor fall short of 24.

The executive power is vested in a Governor, who is elected for four years, and is ineligible for the succeeding seven years after the expiration of his term of office. At the election of Governor, a Lieutenant Governor is also chosen, who is Speaker of the Senate, and on whom the duties of the Governor devolve, in case of his absence or removal.

The representatives and one quarter of the members of the senate are elected annually by the people, on the first Monday in August; the governor is elected by the people, every fourth year, at the same time; and he commences the execution of his office on the fourth Tuesday succeeding the day of the commencement of the election at which he is

chosen. The polls are kept open three days; and the votes are given openly, or *viva voce*, and not by ballot.

The General Assembly meets (at *Frankfort*) annually on the first Monday in December.

The Constitution grants the right of suffrage to every free male citizen (people of color excepted) who has attained the age of 21 years, and has resided in the state two years, or in the county where he offers his vote, one year, next preceding the election.

The judiciary power is vested in a Supreme Court, styled the Court of Appeals, and in such inferior courts as the General Assembly may, from time to time, erect and establish. The judges of the different courts and justices of the peace, hold their offices during good behavior.

OHIO.

The Constitution of this state was formed at Chillicothe, in 1802.

The legislative power is vested in a Senate and House of Representatives, which together are styled *The General Assembly of the State of Ohio*.

The representatives are elected annually on the second Tuesday in October; and they are apportioned among the counties according to the number of white male inhabitants above 21 years of age. Their number cannot be less than 36, nor more than 72.

The senators are chosen biennially, and are apportioned according to the number of white male inhabitants of 21 years of age. Their number cannot be less than one-third, nor more than one-half of the number of representatives.

The executive power is vested in a Governor, who is elected by the people for two years, on the second Tuesday in October; and his term of service commences on the first Monday in December.

The General Assembly meets annually (at *Columbus*), on the first Monday in December.

The right of suffrage is granted to all white male inhabitants above the age of 21 years, who has resided in the state one year next preceding the election, and who have paid, or are charged with a state or county tax.

The judicial power is vested in a Supreme Court, in courts of Common Pleas for each county, and such other courts as the legislature may from time to time establish. The judges are elected by a joint ballot of both Houses of the General Assembly for the term of 7 years.

INDIANA.

The executive power is vested in a Governor, who is elected by the people for a term of three years, and may be once re-elected. At every election of Governor, a Lieutenant Governor is also chosen, who is President of the Senate, and on whom, in case of the death, resignation, or removal of the governor, the powers and duties of governor devolve.

The legislative authority is vested in a *General Assembly*, consisting of a Senate, the members of which are elected for three years, and a House of Representatives, elected annually.

The number of representatives can never be less than 36, nor more than 100; and they are apportioned among the several counties according to the number of white male inhabitants above 21 years of age. The number of senators, who are apportioned in like manner, cannot

be less than one-third, nor more than one-half of the number of representatives.

The representatives and one-third of the members of the senate, are elected annually on the first Monday in August; and the Governor is chosen on the same day, every third year.

The General Assembly meets annually (at *Indianapolis*) on the first Monday in December.

The right of suffrage is granted to all male citizens of the age of 21 years or upwards, who may have resided in the state one year immediately preceding an election.

The judiciary power is vested in one Supreme Court, in circuit courts, and in such other inferior courts as the General Assembly may establish. The Supreme Court consists of three judges; and each of the Circuit Courts consists of a president and two associate judges. The judges are all appointed for the term of seven years. The judges of the Supreme Court are appointed by the governor, with the consent of the Senate; the presidents of the Circuit Courts, by the legislature; and the associate judges are elected by the people.

ILLINOIS.

The legislative authority is vested in a *General Assembly*, consisting of a Senate, the members of which are elected for four years; and of a House of Representatives, elected biennially.

"The number of representatives shall not be less than 27, nor more than 36, until the number of inhabitants within the state shall amount to one hundred thousand; and the number of senators shall never be less than one-third, nor more than one-half of the number of representatives."

The executive power is vested in a Governor, who is elected by the people for four years; and he is not eligible for more than four years in any term of eight years. At the election of Governor, a Lieutenant Governor is also chosen, who is Speaker of the Senate; and on whom, in case the governor vacates his office, the duties of governor devolve.

The representatives and one-half of the senators are elected biennially on the first Monday in August; and the governor is chosen every fourth year, at the same time.

The General Assembly meets every other year (at *Vandalia*), on the first Monday in the December next following the election; and the governor is authorized to convene it, on extraordinary occasions, at other times.

All white male inhabitants, above the age of 21 years, having resided in the state six months next preceding an election, have the rights of electors.

The judicial power is vested in a Supreme Court, and in such inferior courts as the General Assembly may establish. The judges are appointed by a joint ballot of both branches of the General Assembly, and hold their offices during good behavior.

MISSOURI.

The Constitution of this state was formed at St. Louis, in 1820.

The legislative power was vested in a *General Assembly*, consisting of a Senate and House of Representatives.

The representatives are chosen every second year. Every county is

entitled to at least one representative; but the whole number can never exceed 100.

The senators are elected for four years; the seats of one-half being vacated every second year. The constitutional number is not less than 14, nor more than 33. They are chosen by districts, and are apportioned according to the number of free white inhabitants.

The elections for representatives and senators are held biennially on the first Monday in August.

The executive power is vested in a Governor, who is elected for four years, on the first Monday in August; and he is ineligible for the next four years after the expiration of his term of service.

At the time of the election of Governor, a Lieutenant Governor is also chosen, who is, by virtue of his office, President of the Senate.

The Legislature meets every second year (at the *City of Jefferson*), on the first Monday in November.

The right of suffrage is granted to every white male citizen who has attained the age of 21 years, and has resided in the state one year before an election, the last three months thereof being in the county or district in which he offers his vote.

The judicial power is vested in a Supreme Court, in a Chancellor, Circuit Courts, and such other inferior tribunals as the General Assembly may, from time to time, establish.

The judges are appointed by the Governor, by and with the advice and consent of the Senate; and they hold their offices during good behavior, but not beyond the age of 65 years.

3

RESOLUTIONS
OF
VIRGINIA AND KENTUCKY,

PENNED BY MADISON AND JEFFERSON, IN RELATION TO THE ALIEN
AND SEDITION LAWS.

WE publish the Resolutions of Virginia and Kentucky, penned by Madison and Jefferson, in relation to the Alien and Sedition laws, in the years 1798 and 1799, from a copy in pamphlet form reprinted at Charleston in 1828, from a Richmond edition, issued two years before.

The Alien and Sedition laws were enacted by Congress, during the session of 1797-98.

On the 10th of November, 1798, Mr. John Breckenridge introduced into the Legislature of Kentucky, resolutions expressive of the sense of that body in relation thereto, which were known to have been written by Mr. Jefferson; and on the 21st of December of the same year, Colonel John Taylor of Caroline, proposed in the Legislature of Virginia, resolutions also on the same subject, drawn up by Mr. Madison. By these resolutions, the Governors were desired to transmit a copy to the Executive of each of the States, to be laid before their respective Legislatures, the result of which was that the States of Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York and Delaware, passed resolves expressive of their disapprobation of the doctrines contained in the same.

These dissenting resolutions were taken up on the 14th of November, 1799, by the Legislature of Kentucky, which, by an *unanimous vote*, resolved, to adhere to the principles originally laid down. The same subject was referred to a Committee in the Virginia Legislature, and a report made thereon during the session of '99-1800. This report, of which, on the 20th of January of the latter year, five thousand copies were ordered to be printed for distribution, was penned by Mr. Madison, and as it contains in its body a verbatim copy of all the resolutions of December 21st, 1798, the necessity is obviated of inserting those resolutions in a separate form.—*Banner of the Constitution.*

Virginia House of Delegates. Session of 1799—1800.

REPORT of the Committee to whom were referred the Communications of the various States, relative to the Resolutions of the last General Assembly of the State, concerning the Alien and Sedition Laws.

Whatever room might be found in the proceedings of some of the States, who have disapproved of the Resolutions of the General Assembly of this Commonwealth, passed on the 21st day of December, 1798, for painful remarks on the spirit and manner of those proceedings, it appears to the Committee most consistent with the duty as

well as dignity of the General Assembly, to hasten an oblivion of every circumstance, which might be construed into a diminution of mutual respect, confidence, and affection, among the members of the Union.

The Committee have deemed it a more useful task to revise, with a critical eye, the resolutions which have met with this disapprobation; to examine fully the several objections and arguments which have appeared against them; and to inquire whether there be any errors of fact, of principle, or of reasoning, which the candor of the General Assembly ought to acknowledge and correct.

The first of the resolutions is in the words following:

Resolved, That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this State, against every aggression, either foreign or domestic, and that they will support the Government of the United States in all measures warranted by the former."

No unfavorable comment can have been made on the sentiments here expressed. To maintain and defend the Constitution of the United States, and of their own State, against every aggression, both foreign and domestic, and to support the Government of the United States in all measures warranted by their Constitution, are duties which the General Assembly ought always to feel, and to which, on such an occasion, it was evidently proper to express their sincere and firm adherence.

In their next resolution—"The General Assembly most solemnly declares a warm attachment to the Union of the States, to maintain which it pledges all its powers; and, that for this end, it is their duty to watch over and oppose every infraction of those principles, which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence and the public happiness."

The observation just made is equally applicable to this solemn declaration of warm attachment to the Union, and this solemn pledge to maintain it; nor can any question arise among enlightened friends of the Union, as to the duty of watching over and opposing every infraction of those principles which constitute its basis, and a faithful observance of which can alone secure its existence, and the public happiness thereon depending.

The third resolution is in the words following:

"That this assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government, as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact—as no further valid than they are authorised by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto, have the right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights, and liberties appertaining to them."

On this resolution the Committee have bestowed all the attention which its importance merits; They have scanned it not merely with a strict, but with a severe, eye; and they feel confidence in pronouncing,

that, in its just and fair construction, it is unexceptionably true in its several positions, as well as constitutional and conclusive in its inferences.

The resolution declares, *first*, that "it views the powers of the Federal Government, as resulting from the compact to which the States are parties;" in other words, that the Federal powers are derived from the Constitution; and, that the Constitution is a compact to which the States are parties.

Clear as the position must seem, that the Federal powers are derived from the Constitution, and from that alone, the Committee are not unapprised of a late doctrine, which opens another source of Federal powers, not less extensive and important, than it is new and unexpected. The examination of this doctrine will be most conveniently connected with a review of a succeeding resolution. The Committee satisfy themselves here with briefly remarking, that in all the contemporary discussions and comments which the Constitution underwent, it was constantly justified and recommended, on the ground, that the powers not given to the Government, were withheld from it; and, that if any doubt could have existed on this subject, under the original text of the Constitution, it is removed, as far as words could remove it, by the 12th amendment, now a part of the Constitution, which expressly declares, "that the powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The other position involved in this branch of the resolution, namely, "that the States are parties to the Constitution or compact," is, in the judgment of the Committee, equally free from objection. It is indeed true, that the term "States," is sometimes used in a vague sense, and sometimes in different senses, according to the subject to which it is applied. Thus, it sometimes means the separate sections of territory occupied by the political societies within each; sometimes the particular governments established by those societies; sometimes those societies as organized into those particular governments; and lastly, it means the people composing those political societies, in their highest sovereign capacity. Although it might be wished that the perfection of language admitted less diversity in the signification of the same words, yet little inconvenience is produced by it, where the true sense can be collected with certainty from the different applications. In the present instance, whatever different constructions of the term "States," in the resolution, may have been entertained, all will at least concur in the last mentioned; because in that sense the Constitution was submitted to the "States," in that sense the "States" ratified it; and, in that sense of the term "States," they are consequently parties to the compact, from which the powers of the Federal Government result.

The next position is, that the General Assembly views the powers of the Federal Government, "as limited by the plain sense and intention of the instrument constituting that compact" and "as no farther valid than they are authorized by the grants therein enumerated." It does not seem possible that any just objection can lie against either of these clauses. The first amounts merely to a declaration that the compact ought to have the interpretation plainly intended by the parties to it; the other to a declaration, that it ought to have the execution and effect intended by them. If the powers granted, be valid, it is solely because

they are granted; and, if the granted powers are valid, because granted, all other powers not granted, must not be valid.

The resolution having taken this view of the Federal compact, proceeds to infer, "that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States, who are parties thereto, have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights, and liberties, appertaining to them."

It appears to your Committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts—that, where resort can be had to no tribunal, superior to the authority of the parties, the parties themselves must be the rightful judges in the last resort, whether the bargain made has been pursued or violated. The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the Constitution, that it rests on this legitimate and solid foundation. The States, then, being the parties to the Constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority to decide in the last resort, whether the compact made by them be violated; and, consequently, that, as the parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition.

It does not follow, however, that because the States, as sovereign parties to their Constitutional compact, must ultimately decide whether it has been violated, that such a decision ought to be interposed, either in a hasty manner, or on doubtful and inferior occasions. Even in the case of ordinary Conventions between different nations, where, by the strict rule of interpretation, a breach of a part may be deemed a breach of the whole; every part being deemed a condition of every other part, and of the whole, it is always laid down that the breach must be both wilful and material to justify an application of the rule. But in the case of an intimate and Constitutional Union, like that of the United States, it is evident that the interposition of the parties, in their sovereign capacity, can be called for by occasions only, deeply and essentially affecting the vital principles of their political system.

The resolution has, accordingly, guarded against any misapprehension of its object, by expressly requiring for such an interposition, "the case of a *deliberate, palpable, and dangerous* breach of the Constitution, by the exercise of *powers not granted* by it." It must be a case, not of a light and transient nature, but of a nature *dangerous* to the great purposes for which the Constitution was established. It must be a case, moreover, not obscure or doubtful in its construction, but plain and *palpable*. Lastly, it must be a case not resulting from a partial consideration, or hasty determination; but a case stamped with a final consideration and *deliberate* adherence. It is not necessary, because the resolution does not require, that the question should be discussed, how far the exercise of any particular power, ungranted by the Constitution, would justify the interposition of the parties to it. As cases might easily be stated, which none would contend ought to fall within that description; cases, on the other hand, might, with equal ease, be stated,

so flagrant and so fatal, as to unite every opinion in placing them within the description.

But the resolution has done more than guard against misconstruction, by expressly referring to cases of a *deliberate, palpable, and dangerous* nature. It specifies the object of the interposition which it contemplates, to be solely that of arresting the progress of the *evil* of usurpation, and of maintaining the authorities, rights, and liberties appertaining to the States, as parties to the constitution.

From this view of the resolution, it would seem inconceivable that it can incur any just disapprobation from those, who, laying aside all momentary impressions, and recollecting the genuine source and object of the Federal Constitution, shall candidly and accurately interpret the meaning of the General Assembly. If the deliberate exercise of dangerous powers, palpably withheld by the Constitution, could not justify the parties to it, in interposing even so far as to arrest the progress of the evil, and thereby to preserve the Constitution itself, as well as to provide for the safety of the parties to it; there would be an end to all relief from usurped power, and a direct subversion of the rights specified or recognized under all the State Constitutions, as well as a plain denial of the fundamental principle on which our independence itself was declared.

But it is objected, that the Judicial authority is to be regarded as the sole expositor of the Constitution in the last resort; and it may be asked for what reason, the declaration by the General Assembly, supposing it to be theoretically true, could be required at the present day and in so solemn a manner.

On this objection it might be observed, *first*: that there may be instances of usurped power, which the forms of the Constitution would never draw within the control of the Judicial department; *secondly*: that if the decision of the Judiciary be raised above the authority of the sovereign parties to the Constitution, the decisions of the other departments, not carried by the forms of the Constitution before the Judiciary, must be equally authoritative and final with the decisions of that department. But the proper answer to the objection is, that the resolution of the General Assembly relates to those great and extraordinary cases, in which all the forms of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers not delegated, may not only be usurped and executed by the other departments, but that the Judicial department, also, may exercise or sanction dangerous powers beyond the grant of the Constitution; and consequently, that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority, as well as by another; by the Judiciary as well as by the Executive, or the Legislature.

However true, therefore, it may be that the Judicial department is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the Government; not in relation to the rights of the parties to the Constitutional compact, from which the Judicial as well as the other departments hold their delegated trusts. On any other hypothesis the delegation of Judicial power would annul the authority delegating it; and the

concurrence of this department with the others in usurped powers, might subvert forever, and beyond the possible reach of any rightful remedy, the very Constitution which all were instituted to preserve.

The truth declared in the resolution being established, the expediency of making the declaration at the present day may safely be left to the temperate consideration and candid judgment of the American public. It will be remembered, that a frequent recurrence to fundamental principles, is solemnly enjoined by most of the State Constitutions, and particularly by our own, as a necessary safeguard against the danger of degeneracy to which Republics are liable, as well as other Governments, though in a less degree than others. And a fair comparison of the political doctrines not unfrequent at the present day, with those which characterized the epoch of our Revolution, and which forms the basis of our Republican Constitutions, will best determine whether the declaratory recurrence here made to those principles, ought to be viewed as unseasonable and improper, or as a vigilant discharge of an important duty. The authority of Constitutions over Governments, and of the sovereignty of the people over Constitutions, are truths which are at all times necessary to be kept in mind; and at no time, perhaps, more necessary than at present.

The fourth resolution stands as follows:

"That the General Assembly doth also express its deep regret, that a spirit has, in sundry instances, been manifested by the Federal Government to enlarge its powers by forced constructions of the Constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former articles of confederation, were the less liable to be misconstrued), so as to destroy the meaning and effect of the particular enumeration which necessarily explains, and limits the general phrases; and so as to consolidate the States by degrees, into one sovereignty, the obvious tendency and inevitable result of which would be, to transform the present Republic system of the United States into an absolute, or at best a mixed monarchy."

The *first* question here to be considered is, whether a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced constructions of the Constitutional charter.

The General Assembly having declared their opinion merely by regretting in general terms that forced constructions for enlarging the Federal powers have taken place, it does not appear to the Committee necessary to go into a specification of every instance to which the resolution may allude. The Alien and Sedition Acts being particularly named in a succeeding resolution, are of course to be understood as included in the allusion. Omitting others which have less occupied public attention, or been less extensively regarded as unconstitutional, the resolution may be presumed to refer particularly to the Bank Law, which, from the circumstances of its passage, as well as the latitude of construction on which it is founded, strikes the attention with singular force; and the carriage tax, distinguished also by circumstances in its history, having a similar tendency. Those instances alone, if resulting from forced construction, and calculated to enlarge the powers of the Federal Government, as the Committee cannot but conceive to be the case, sufficiently warrant this part of the resolution. The Committee have not

thought it incumbent on them to extend their attention to laws which have been objected to, rather as varying the Constitutional distribution of powers in the Federal Government, than as an absolute enlargement of them; because instances of this sort, however important in their principles and tendencies, do not appear to fall strictly within the text under review.

The other questions presenting themselves, are—1. Whether indications have appeared of a design to expound certain general phrases copied from the "Articles of Confederation" so as to destroy the effect of the particular enumeration explaining and limiting their meaning. 2. Whether this exposition would by degrees consolidate the States into one sovereignty. 3. Whether the tendency and result of this consolidation would be to transform the republican system of the United States into a monarchy.

1. The general phrases here meant must be those "of providing for the common defence and general welfare."

In the "Articles of Confederation," the phrases are used as follows, in Art. VIII, "All charges of war, and all other expenses that shall be incurred for the common defence and general welfare, are allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each state, granted to, or surveyed for, any person, as such land and the buildings and the improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall from time to time direct and appoint."

In the existing Constitution, they make the following part of Sec. 8. "The Congress shall have power, to lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defence and general welfare of the United States."

The similarity in the use of these phrases in the two great Federal charters, might well be considered, as rendering their meaning less liable to be misconstrued in the latter: because it will scarcely be said that, in the former, they were ever understood to be either a general grant of power, or to authorize the requisition or application of money by the old Congress to the common defence and general welfare, except in the cases afterwards enumerated, which explained and limited their meaning; and if such was the limited meaning attached to these phrases in the very instrument revised and remodeled by the present constitution, it can never be supposed that when copied into this Constitution, a different meaning ought to be attached to them.

That, notwithstanding this remarkable security against misconstruction, a design has been indicated to expound these phrases in the Constitution, so as to destroy the effect of the particular enumeration of powers by which it explains and limits them, must have fallen under the observation of those who have attended to the course of public transactions. Not to multiply proofs on this subject, it will suffice to refer to the Debates of the Federal Legislature, in which arguments have on different occasions been drawn, with apparent effect, from these phrases, in their indefinite meaning.

To these indications might be added, without looking farther, the official report on Manufactures, by the late Secretary of the Treasury, made on the 5th of December, 1791; and the report of a Committee of

Congress, in January, 1797, on the promotion of Agriculture. In the first of these, it is expressly contended to belong "to the discretion of the National Legislature, to pronounce upon the objects which concern the *general welfare*, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt, that whatever concerns the general interests of LEARNING, of AGRICULTURE, of MANUFACTURES, and of COMMERCE, are within the sphere of the National Councils, *as far as regards an application of money.*" The latter report assumes the same latitude of power in the National Councils, and applies it to the encouragement of Agriculture, by means of a society to be established at the seat of Government. Although neither of these reports may have received the sanction of a law carrying it into effect; yet, on the other hand, the extraordinary doctrine contained in both, has passed without the slightest positive mark of disapprobation from the authority to which it was addressed.

Now, whether the phrases in question be construed to authorise every measure relating to the common defence and general welfare, as contended by some; or every measure only in which there might be an application of money, as suggested by the caution of others; the effect must substantially be the same, in destroying the import and force of the particular enumeration of powers which follow these general phrases in the Constitution. For, it is evident that there is not a single power, whatever, which may not have some reference to the common defence, or the general welfare; nor a power of any magnitude, which, in its exercise, does not involve or admit an application of money. The Government, therefore, which possesses power in either one or other of these extents, is a government without the limitations formed by a particular enumeration of powers; and, consequently, the meaning and effect of this particular enumeration, is destroyed by the exposition given to these general phrases.

This conclusion will not be affected by an attempt to qualify the power over the "general welfare," by referring it to cases where the *general welfare* is beyond the reach of *separate* provisions by the *individual states*; and leaving to these their jurisdictions in cases to which their separate provisions may be competent. For, as the authority of the individual states must in all cases be incompetent to general regulations operating through the whole, the authority of the United States would be extended to every object relating to the general welfare, which might, by any possibility, be provided for by the general authority. This qualifying construction, therefore, would have little, if any tendency, to circumscribe the power claimed under the latitude of the terms "general welfare."

The true and fair construction of this expression, both in the original and existing Federal compacts, appears to the Committee too obvious to be mistaken. In both, the Congress is authorised to provide money for the common defence and *general welfare*. In both is subjoined to this authority an enumeration of the cases to which their power shall extend. Money cannot be applied to the *general welfare*, otherwise than by an application of it to some *particular* measure conducive to the general welfare. Whenever, therefore, money has been raised by the general authority, and is to be applied to a particular measure, a question arises, whether the particular measure be within the enume-

rated authorities vested in Congress. If it be, the money requisite for it, may be applied to it; if it be not, no such application can be made. This fair and obvious interpretation coincides with, and is enforced by, the clause in the constitution, which declares that "no money shall be drawn from the Treasury, but in consequence of appropriations by law." An appropriation of money to the general welfare, would be deemed rather a mockery than an observance of this Constitutional injunction.

2. Whether the exposition of the general phrases here combatted, would not, by degrees, consolidate the States into one sovereignty, is a question, concerning which the committee can perceive little room for difference of opinion. To consolidate the States into one sovereignty, nothing more can be wanted than to supersede their respective sovereignties in the cases reserved to them, by extending the sovereignty of the United States to all cases of the "general welfare," that is to say, *to all cases whatever.*

3. That the obvious tendency and inevitable result of a consolidation of the States into one sovereignty, would be to transform the republican system of the United States into a monarchy, is a point which seems to have been sufficiently decided by the general sentiment of America. In almost every instance of discussion, relating to the consolidation in question, its certain tendency to pave the way to monarchy, seems not to have been contested. The prospect of such a consolidation has formed the only topic of controversy. It would be unnecessary, therefore, for the committee to dwell long on the reasons which support the position of the General Assembly. It may not be improper, however, to remark two consequences, evidently flowing from an extension of the Federal powers to every subject falling within the idea of the "general welfare."

One consequence must be, to enlarge the sphere of discretion allotted to the Executive Magistrate. Even within the Legislative limits properly defined by the Constitution, the difficulty of accommodating legal regulations to a country so great in extent, and so various in its circumstances, has been much felt; and has led to occasional investments of power in the Executive, which involve, perhaps, as large a portion of discretion as can be deemed consistent with the nature of the Executive trust. In proportion as the objects of Legislative care might be multiplied, would the time allowed for each be diminished, and the difficulty of providing uniform and particular regulations for all, be increased. From these sources would necessarily ensue a greater latitude to the agency of that department which is always in existence, and which could best mould regulations of a general nature so as to suit them to the diversity of particular situations. And it is in this latitude, as a supplement to the deficiency of the laws, that the degree of Executive prerogative materially consists.

The other consequence would be, that of an excessive augmentation of the offices, honors, and emoluments, depending on the Executive will. Add to the present legitimate stock, all those of every description which a consolidation of the States would take from them, and turn over to the Federal Government, and the patronage of the Executive would necessarily be as much swelled in this case, as its prerogative would be in the other.

This disproportionate increase of prerogative and patronage, must

evidently either enable the Chief Magistrate of the Union, by quiet means, to secure his re-election from time to time, and, finally, to regulate the succession as he might please; or, by giving so transcendent an importance to the office, would render the elections to it so violent and corrupt, that the public voice itself might call for an hereditary, in place of an elective, succession. Whichever of these events might follow, the transformation of the republican system of the United States into a monarchy, anticipated by the General Assembly from a consolidation of the States into one sovereignty, would be equally accomplished; and whether it would be into a mixed or an absolute monarchy, might depend on too many contingencies to admit of any certain foresight.

The resolution next in order is contained in the following terms:

"That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution, in the two late cases of the 'Alien and Sedition Acts,' passed at the last session of Congress; the first of which exercises a power no where delegated to the Federal Government; and which, by uniting Legislative and Judicial powers to those of Executive, subverts the general principles of a free government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution; but, on the contrary, expressly and positively forbidden by one of the amendments thereto; a power, which, more than any other, ought to produce universal alarm; because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right."

The subject of this resolution having, it is presumed, more particularly led the General Assembly into the proceedings which they communicated to the other States, and being in itself of peculiar importance; it deserves the most critical and faithful investigation; for the length of which no other apology will be necessary.

The subject divides itself into, *first*, "The Alien Act," *secondly*, "The Sedition Act."

Of the "Alien Act," it is affirmed by the Resolution, 1st. That it exercises a power no where delegated to the Federal Government. 2d. That it unites Legislative and Judicial powers to those of the Executive. 3d. That this union of power, subverts the general principles of free government. 4th. That it subverts the particular organization and positive provisions of the Federal Constitution.

In order to clear the way to a correct view of the first position, several observations will be premised.

In the first place, it is to be borne in mind, that it being a characteristic feature of the Federal Constitution, as it was originally ratified, and an amendment thereto having precisely declared, "That the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people;" it is incumbent in this, as in every other exercise of power by the Federal Government, to prove, from the Constitution, that it grants the particular power exercised.

The next observation to be made, is, that much confusion and fallacy have been thrown into the question, by blending the two cases of *aliens*,

members of a hostile nation ; and aliens, members of friendly nations. These two cases are so obviously, and so essentially distinct, that it occasions no little surprise that the distinction should have been disregarded ; and the surprise is so much the greater, as it appears that the two cases are actually distinguished by two separate acts of Congress, passed at the same session, and comprised in the same publication ; the one providing for the case of "alien enemies," the other "concerning aliens" indiscriminately ; and consequently extending to aliens of every nation in peace and amity with the United States. With respect to alien enemies, no doubt has been intimated as to the Federal authority over them ; the Constitution having expressly delegated to Congress the power to declare war against any nation, and of course to treat it and all its members as enemies. With respect to aliens, who are not enemies, but members of nations in peace and amity with the United States, the power assumed by the act of Congress, is denied to be constitutional ; and it is accordingly against this act that the protest of the General Assembly is expressly and exclusively directed.

A third observation is, that were it admitted, as is contended, that the "act concerning Aliens," has for its object, not a *penal*, but a *preventive* justice ; it would still remain to be proved that it comes within the constitutional power of the Federal Legislature ; and, if within its power, that the Legislature has exercised in a constitutional manner.

In the administration of preventive justice, the following principles have been held sacred ; that some probable ground of suspicion be exhibited before some Judicial authority ; that it be supported by oath or affirmation ; that the party may avoid being thrown into confinement, by finding pledges or sureties for his legal conduct sufficient in the judgment of some Judicial authority ; that he may have the benefit of a writ of habeas corpus, and thus obtain his release, if wrongfully confined ; and that he may at any time be discharged from his recognition, or his confinement, and restored to his former liberty and rights, on the order of the proper Judicial authority, if it shall see sufficient cause.

All these principles of the only preventive justice known to American jurisprudence, are violated by the Alien act. The ground of suspicion is to be judged of not by any Judicial authority, but by the Executive Magistrate alone ; no oath or affirmation is required ; if the suspicion be held reasonable by the President, he may order the suspected Alien to depart the territory of the United States, without the opportunity of avoiding the sentence, by finding pledges for his future good conduct ; as the President may limit the time of departure as he pleases, the benefit of the writ of habeas corpus, may be suspended with respect to the party, although the Constitution ordains, that it shall not be suspended, unless when the public safety may require it in case of rebellion or invasion, neither of which existed at the passage of the act ; and the party, being under the sentence of the president, either removed from the United States, or being punished by imprisonment, or disqualification ever to become a citizen on conviction of not obeying the order of removal, he cannot be discharged from the proceedings against him, and restored to the benefits of his former situation, although the *highest Judicial authority* should see the most sufficient cause for it.

But, in the last place, it can never be admitted that the removal of Aliens, authorised by the act, is to be considered, not as punishment for

an offence, but as a measure of precaution and prevention. If the banishment of an alien from a country into which he has been invited, as the asylum most auspicious to his happiness; a country where he may have formed the most tender connections; where he may have invested his entire property, and acquired property of the real and permanent, as well as the moveable and temporary kind; where he enjoys under the laws a greater share of the blessings of personal security, and personal liberty, than he can elsewhere hope for, and where he may have nearly completed his probationary title to citizenship; if, moreover, in the execution of the sentence against him, he is to be exposed, not only to the ordinary dangers of the sea, but to the peculiar casualties incident to a crisis of war, and of unusual licentiousness on that element, and possibly to vindictive purposes which his emigration itself may have provoked; if a banishment of this sort be not a punishment, and among the severest of punishments, it will be difficult to imagine a doom to which the name can be applied. And if it be a punishment, it will remain to be inquired, whether it can be constitutionally inflicted, on mere suspicion, by the single will of the Executive Magistrate, on persons convicted of no personal offence against the laws of the land, nor involved in any offence against the law of nations, charged on the foreign state of which they are members.

One argument offered in justification of this power exercised over Aliens, is, that the admission of them into the country being of favor, not of right, the favor is at all times revocable.

To this argument it might be answered, that, allowing the truth of the inference, it would be no proof of what is required. A question would still occur, whether the Constitution has vested the discretionary power of admitting Aliens, in the Federal government or in the State governments.

But it cannot be a true inference, that because the admission of an Alien is a favor, the favor may be revoked at pleasure. A grant of land to an individual, may be of favor, not of right; but the moment the grant is made, the favor becomes a right, and must be forfeited before it can be taken away. To pardon a malefactor may be a favor, but the pardon is not, on that account, the less irrevocable. To admit an Alien to naturalization, is as much a favor, as to admit him to reside in the country, yet it cannot be pretended that a person naturalized can be deprived of the benefits any more than a native citizen can be disfranchised.

Again, it is said that Aliens not being parties to the Constitution, the rights and privileges which it secures, cannot be at all claimed by them.

To this reasoning, also, it might be answered, that although Aliens are not parties to the Constitution, it does not follow that the Constitution has vested in Congress an absolute power over them. The parties to the Constitution may have granted, or retained, or modified the power over Aliens, without regard to that particular consideration.

But a more direct reply is, that it does not follow, because Aliens are not parties to the Constitutions, as citizens are parties to it, that whilst they actually conform to it, they have no right to its protection. Aliens are not more parties to the laws, than they are parties to the Constitution; yet, it will not be disputed, that as they owe, on one hand, a

temporary obedience, they are entitled in return to their protection and advantage.

If Aliens had no right under the Constitution, they might not only be banished, but even capitally punished, without a jury or the other incidents to a fair trial. But so far has a contrary principle been carried, in every part of the United States, that except on charges of treason, an Alien has, besides all the common privileges, the special one of being tried by a jury, of which one half may be also Aliens.

It is said, further, that by the law and practice of nations, Aliens may be removed at discretion, for offences against the law of nations; that Congress are authorized to define and punish such offences; and that to be dangerous to the peace of society, is, in Aliens, one of those offences.

The distinction between Alien enemies and Alien friends, is a clear and conclusive answer to this argument. Alien enemies are under the law of nations, and liable to be punished for offences against it. Alien friends, except in the single case of public ministers, are under the municipal law, and must be tried and punished according to that law only.

This argument also, by referring the Alien act to the power of Congress to define and *punish* offences against the law of nations, yields the point that the act is of a *penal*, not merely of a preventive operation. It must in truth be so considered. And if it be a penal act, the punishment it inflicts must be justified by some offence that deserves it.

Offences for which Aliens, within the jurisdiction of a country, are punishable, are first, offences committed by the nation of which they make a part, and in whose offences they are involved: Secondly, offences committed by themselves alone, without any charge to the nation to which they belong. The first is the case of Alien enemies; the second, the case of Alien friends. In the first case, the offending nation can no otherwise be punished than by war, one of the laws of which, authorises the expulsion of such of its members as may be found within country, against which the offence has been committed. In the second case, the offence being committed by the individual, not by his nation, and against the municipal law, not against the law of nations, the individual only, and not the nation, is punishable; and the punishment must be conducted according to the municipal law, not according to the law of nations. Under this view of the subject, the act of Congress, for the removal of Alien enemies, being conformable to the law of nations, is justified by the Constitution; and the "act" for the removal of Alien friends, being repugnant to the constitutional principles of Municipal law, is unjustifiable.

Nor is the act of Congress for the removal of Alien friends more agreeable to the general practice of nations, than it is within the purview of the law of nations. The general practice of nations distinguishes between Alien friends and Alien enemies. The latter it has proceeded against, according to the law of nations, by expelling them as enemies; the former it has considered as under a local and temporary allegiance, and entitled to a correspondent protection. If contrary instances are to be found in barbarous countries, under undefined prerogatives, or amid revolutionary dangers, they will not be deemed fit

precedents for the Government of the United States, even, if not beyond its constitutional authority.

It is said that Congress may grant letters of marque and reprisal; that reprisals may be made on persons, as well as property; and that the removal of Aliens may be considered as the exercise, in an inferior degree, of the general power of reprisal on persons.

Without entering minutely into a question that does not seem to require it, it may be remarked, that reprisal is a seizure of foreign persons or property, with a view to obtain that justice for injuries done by one State or its members to another State or its members: for which, a refusal of the aggressors requires such a resort to force under the law of nations. It must be considered as an abuse of words, to call the removal of persons from a country, a seizure or reprisal on them; nor is the distinction to be overlooked between reprisals on persons within the country and under the faith of its laws, and on persons out of the country. But laying aside these considerations, it is evidently impossible to bring the Alien act within the power of granting reprisals; since it does not allege or imply any injury received from any particular nation, for which this proceeding against its members was intended as a reparation.

The proceeding is authorized against Aliens of *every nation*; of nations charged neither with any similar proceeding against American citizens, nor with any injuries for which justice might be sought, in the mode prescribed by the act. Were it true, therefore, that good causes existed for reprisals against one or more foreign nations, and that neither the persons nor property of its members, under the faith of our laws, could plead an exemption; the operation of the act ought to have been limited to the Aliens among us, belonging to such nations. To license reprisals against all nations, for aggressions charged on one only, would be a measure as contrary to every principle of justice and public law, as to a wise policy and the universal practice of nations.

It is said that the right of removing Aliens is an incident to the power of war, vested in Congress by the Constitution.

This is a former argument in a new shape only; and is answered by repeating, that the removal of Alien enemies is an incident to the power of war; that the removal of Alien friends is not an incident to the power of war.

It is said that Congress are by the Constitution to protect each state against invasion; and that the means of *preventing* invasion are included in the power of protection against it.

The power of war, in general, having been before granted by the Constitution, this clause must either be a mere specification for greater caution and certainty, of which there are other examples in the instrument; or by the injunction of a duty, superadded to a grant of the power. Under either explanation, it cannot enlarge the powers of Congress on the subject. The power and the duty to protect each state against an invading enemy would be the same under the general power, if this regard to greater caution had been omitted.

Invasion is an operation of war. To protect against invasion is an exercise of the power of war. A power, therefore, not incident to war, cannot be incident to a particular modification of war. And as the removal of alien friends, has appeared to be no incident to a general

state of war, it cannot be incident to a partial state, or a particular modification of war.

Nor can it ever be granted, that a power to act on a case when it actually occurs, includes a power over all the means that may *tend to prevent* the occurrence of the case. Such a latitude of construction would render unavailing every practical definition of particular and limited powers. Under the idea of preventing war in general, as well as invasion in particular, not only an indiscriminate removal of all aliens might be enforced, but a thousand other things still more remote from the operations and precautions appurtenant to war, might take place. A bigotted or tyrannical nation might threaten us with war, unless certain religious or political regulations were adopted by us; yet it never could be inferred, if the regulations which would prevent war, were such as Congress had otherwise no power to make, that the power to make them would grow out of the purpose they were to answer. Congress have power to suppress insurrections, yet it would not be allowed to follow, that they might employ all the means tending to prevent them; of which a system of moral instruction for the ignorant, and of provident support for the poor, might be regarded as among the most efficacious.

One argument for the power of the General Government to remove aliens, would have been passed in silence, if it had appeared under any authority inferior to that of a report made during the last session of Congress, to the House of Representatives, by a committee, and approved by the House. The doctrine on which this argument is founded is of so new, and so extraordinary a character, and strikes so radically at the political system of America, that it is proper to state it in the very words of the report.

"The act [concerning aliens] is said to be unconstitutional, because to remove aliens is a direct breach of the Constitution, which provides, by the 9th section of the 1st article: That the migration or importation of such persons as any of the states shall think proper to admit, shall not be prohibited by the Congress, prior to the year 1808."

Among the answers given to this objection to the constitutionality of the act, the following very remarkable one is extracted:

"Thirdly, that as the Constitution has *given to the states* no power to remove aliens, during the period of the limitation under consideration, in the mean time, on the construction assumed there would be no authority in the country empowered to send away dangerous aliens, which cannot be admitted."

The reasoning here used would not in any view be conclusive; because there are powers exercised by most other governments, which, in the United States are withheld by the people, both from the General Government and from the State Governments. Of this sort are many of the powers prohibited by the declarations of right prefixed to the Constitutions, or by the clauses in the Constitutions in the nature of such declarations. Nay, so far is the political system of the United States distinguishable from that of other countries, by the caution with which powers are delegated and defined; that in one very important case, even of commercial regulation and revenue, the power is absolutely locked up against the hands of both governments. A tax on exports can be laid by no constitutional authority whatever. Under a system thus peculiarly guarded there could surely be no absurdity in

supposing that alien friends, who, if guilty of treasonable machinations, may be punished, or if suspected on probable grounds, may be secured by pledges or imprisonment, in like manner with permanent citizens, were never meant to be subjected to banishment by any arbitrary and unusual process, either under the one government or the other.

But it is not the inconclusiveness of the general reasoning in this passage, which chiefly calls the attention to it. It is the principle assumed by it, that the powers held by the states are given to them by the Constitution of the United States; and the inference from this principle, that the powers supposed to be necessary, which are not so given to the State Governments, must reside in the Government of the United States.

The respect which is felt for every portion of the constituted authorities, forbids some of the reflections which this singular paragraph might excite; and they are the more readily suppressed, as it may be presumed, with justice perhaps, as well as candor, that inadvertence may have had its share in the error. It would be an unjustifiable delicacy, nevertheless, to pass by so portentous a claim, proceeding from so high an authority, without a monitory notice of the fatal tendencies with which it would be pregnant.

Lastly, it is said that a law on the same subject with the Alien Act, passed by this state originally in 1785, and re-enacted in 1792, is a proof that a summary removal of suspected aliens, was not heretofore regarded by the Virginia Legislature, as liable to the objections now urged against such a measure.

This charge against Virginia vanishes before the simple remark, that the law of Virginia relates to "suspicious persons being the subjects of any foreign power or state, who shall have *made a declaration of war*, or actually *commenced hostilities*, or from whom the President shall apprehend *hostile designs*;" whereas the act of Congress relates to aliens, being the subjects of foreign powers, and states, who have *neither declared war, nor commenced hostilities, nor from whom hostile designs are apprehended*.

II. It is next affirmed by the Alien Act, that it unites Legislative, Judicial, and Executive powers in the hands of the President.

However difficult it may be to mark in every case with clearness and certainty, the line which divides Legislative power from the other departments of power, all will agree that the powers referred to these departments may be so general and undefined as to be of a legislative, not of an executive or judicial nature; and may for that reason be unconstitutional. Details to a certain degree are essential to the nature and character of a law; and on criminal subjects it is proper that details should leave as little as possible to the discretion of those who are to apply and execute the law. If nothing more were required in exercising a legislative trust, than a general conveyance of authority, without laying down any precise rules, by which the authority conveyed should be carried into effect; it would follow that the whole power of legislation might be transferred by the Legislature from itself, and proclamations might become substitutes for laws. A delegation of power in this latitude would not be denied to be a union of the different powers.

To determine, then, whether the appropriate powers of the distinct departments are united by the act authorising the executive to remove

aliens, it must be inquired whether it contains such details, definitions, and rules as appertain to the true character of a law; especially a law by which personal liberty is invaded, property deprived of its value to the owner, and life itself indirectly exposed to danger.

The Alien Act declares, "that it shall be lawful for the President to order all such aliens as he shall judge *dangerous* to the peace and safety of the United States, or shall have reasonable ground to *suspect*, are concerned in any treasonable, or *secret machinations* against the government thereof, to depart," &c.

Could a power be well given in terms less definite, less particular, and less precise? To be *dangerous to the public safety*; to be *suspected of secret machinations* against the government: these can never be mistaken for legal rules or certain definitions. They leave every thing to the President. His will is the law.

But it is not a Legislative power only that is given to the President. He is to stand in the place of the Judiciary also. His suspicion is the only evidence which is to convict: his order the only judgment which is to be executed.

Thus it is, the President, whose will is to designate the offensive conduct; it is his will that is to ascertain the individuals on whom it is charged; and it is his will that is to cause the sentence to be executed. It is rightly affirmed, therefore, that the act unites Legislative and Judicial powers to those of the Executive.

III. It is affirmed that this union of power subverts the general principles of free government.

It has become an axiom in the science of government, that a separation of the Legislative, Executive, and Judicial departments is necessary to the preservation of public liberty. Nowhere has this axiom been better understood in theory, or more carefully pursued in practice, than in the United States.

IV. It is affirmed that such a union of powers subverts the particular organization and positive provisions of the Federal Constitution.

According to the particular organization of the Constitution, its legislative powers are vested in the Congress, its Executive powers in the President, and its Judicial powers in a supreme and inferior tribunals. The union of any two of these powers, and still more of all three, in any one of these departments, as has been shown to be done by the Alien Act, must consequently subvert the constitutional organization of them.

That positive provisions in the Constitution, securing to individuals the benefits of fair trial, are also violated by the union of powers in the Alien Act, necessarily results from the two facts, that the act relates to alien friends, and that alien friends being under the municipal law only, are entitled to its protection.

The *second* object against which the resolution protests, is the Sedition Act.

Of this act it is affirmed, 1. That it exercises in like manner a power not delegated by the Constitution. 2. That the power, on the contrary, is expressly and positively forbidden by one of the amendments to the Constitution. 3. That this is a power which more than any other ought to produce universal alarm, because it is levelled against that right of freely examining public characters and measures, and of free

communication thereon, which has ever been justly deemed the only effectual guardian of every other right.

1. That it exercises a power not delegated by the Constitution.

Here again it will be proper to recollect, that the Federal government being composed of powers specifically granted, with a reservation of all others, to the states or to the people, the positive authority under which the Sedition Act could be passed must be produced by those who assert its constitutionality. In what part of the Constitution then is this authority to be found.

Several attempts have been made to answer this question, which will be examined in their order. The Committee will begin with one, which has filled them with equal astonishment and apprehension; and which, they cannot but persuade themselves, must have the same effect on all who will consider it with coolness and impartiality, and with a reverence for our Constitution, in the true character in which it issued from the sovereign authority of the people. The Committee refer to the doctrine lately advanced as a sanction to the Sedition Act; "that the common or unwritten law," a law of vast extent and complexity, and embracing almost every possible subject of legislation, both civil and criminal, makes a part of the law of these states, in their united and national capacity.

The novelty, and, in the judgment of the Committee, the extravagance of this pretension, would have consigned it to the silence in which they have passed by other arguments, which an extraordinary zeal for the act has drawn into the discussion; but the auspices under which this innovation presents itself, have constrained the Committee to bestow on it an attention which other considerations might have forbidden.

In executing the task, it may be of use to look back to the colonial state of this country prior to the Revolution; to trace the effect of the Revolution which converted the colonies into independent states; to inquire into the import of the articles of confederation, the first instrument by which the union of the states was regularly established; and, finally, to consult the Constitution of 1787, which is the oracle that must decide the important question.

In the state prior to the Revolution, it is certain that the common law, under different limitations, made a part of the colonial codes. But whether it be understood that the original colonists brought the law with them, or made it their law by adoption, it is equally certain that it was the separate law of each colony within its respective limits, and was unknown to them, as a law pervading and operating through the whole, as one society.

It could not possibly be otherwise. The common law was not the same in any two of the colonies; in some the modifications were materially and extensively different. There was no common legislature, by which a common will could be expressed in the form of a law; nor any common magistracy, by which such a law could be carried into practice. The will of each colony, alone and separately, had its organs for these purposes.

This stage of our political history furnishes no foothold for the patrons of this new doctrine.

Did, then, the principle or operation of the great event which made

the colonies independent states, imply or introduce the common law, as a law of the Union ?

The fundamental principle of the Revolution was, that the colonies were co-ordinate members with each other, and with Great Britain; of an empire, united by a common executive sovereign, but not united by any common legislative sovereign. The legislative power was maintained to be as complete in each American parliament, as in the British parliament. And the royal prerogative was in force in each colony, by virtue of its acknowledging the king for its executive magistrate, as it was in Great Britain, by virtue of a like acknowledgment there. A denial of these principles by Great Britain, and the assertion of them by America, produced the Revolution.

There was a time, indeed, when an exception to the legislative separation of the several component and co-equal parts of the empire, obtained a degree of acquiescence. The British Parliament was allowed to regulate the trade with foreign nations, and between the different parts of the empire. This was, however, mere practice with our right, and contrary to the theory of the Constitution. The convenience of some regulations in both cases was apparent; and, as there was no legislature with power over the whole, nor any constitutional pre-eminence among the legislatures of the several parts, it was natural for the legislature of that particular part which was the eldest and the largest, to assume this function, and for the others to acquiesce in it. This tacit arrangement was the less criticised, as the regulations established by the British Parliament operated in favor of that part of the empire, which seemed to bear the principal share of the public burdens, and were regarded as an indemnification of its advances for the other parts. As long as this regulating power was confined to the two objects of convenience and equity, it was not complained of, nor much inquired into. But, no sooner was it perverted to the selfish views of the party assuming it, than the injured parties began to feel and to reflect; and the moment the claim to a direct and indefinite power was ingrafted on the precedent of the regulating power, the whole charm was dissolved, and every eye open to the usurpation. The assertion by Great Britain of a power to make laws for the other members of the empire *in all cases whatsoever* ended in the discovery that she had a right to make laws for them *in no cases whatsoever*.

Such being the ground of our revolution, no support nor color can be drawn from it, for the doctrine that the common law is binding on these States as one society. The doctrine, on the contrary, is evidently repugnant to the fundamental principle of the Revolution.

The articles of confederation, are the next source of information on this subject.

In the interval between the commencement of the Revolution and the final ratification of these articles, the nature and extent of the Union was determined by the circumstances of the crisis, rather than by any accurate delineation of the general authority. It will not be alledged that the "common law" could have had any legitimate birth as a law of the United States during that state of things. If it came as such into existence at all, the charter of confederation must have been its parent.

Hereagain, however, its pretensions are absolutely destitute of foundation. This instrument does not contain a sentence or a syllable that can be tortured into a countenance of the idea, that the parties to it were,

with respect to the objects of the common law, to form one community. No such law is named, or implied, or alluded to, as being in force, or as brought into force by that compact. No provision is made by which such a law could be carried into operation; whilst on the other hand, every such inference or pretext is absolutely precluded by article 2, which declares "that each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

Thus far it appears that not a vestige of this extraordinary doctrine can be found in the origin or progress of American institutions. The evidence against it has, on the contrary, grown stronger at every step, till it has amounted to a formal and positive exclusion, by written articles of compact among the parties concerned.

Is this exclusion revoked, and the common law introduced as national law, by the present constitution of the United States? This is the final question to be examined.

It is readily admitted that particular parts of the common law may have a sanction from the Constitution, so far as they are necessarily comprehended in the technical phrases which express the powers delegated to the government; and so far, also, as such other parts may be adopted by Congress as necessary and proper for carrying into execution the powers expressly delegated. But, the question does not relate to either of these portions of the common law. It relates to the common law beyond these limitations.

The only part of the Constitution which seems to have been relied on in this case, is the 2d section of Article III. "The Judicial power shall extend to all cases, *in law and equity*, arising *under this Constitution*, the *Laws* of the United States, and Treaties made, or which shall be made, under their authority."

It has been asked, what cases, distinct from those arising under the laws and treaties of the United States, can arise under the Constitution, other than those arising under the common law; and it is inferred, that the common law is accordingly adopted or recognized by the Constitution.

Never, perhaps, was so broad a construction applied to a text so clearly unsusceptible of it. If any color for the inference could be found, it must be in the impossibility of finding any other cases in law and equity, within the provisions of the Constitution, to satisfy the expression; and rather than resort to a construction affecting so essentially the whole character of the government, it would perhaps be more rational to consider the expression as a mere pleonasm or inadvertence. But it is not necessary to decide on such a dilemma. The expression is fully satisfied, and its accuracy justified, by two descriptions of cases, to which the judicial authority is extended, and neither of which implies that the common law is the law of the United States. One of these descriptions comprehends the cases growing out of the restrictions on the Legislative power of the States. For example, it is provided that "no State shall emit bills of credit," or "make any thing but gold and silver coin a tender in payment of debts." Should this prohibition be violated, and a suit *between citizens of the same State* be the consequence, this would be a case arising under the Constitution before the Judicial power of the United States. A second description comprehends

suits between citizens and foreigners, of citizens of different States, to be decided according to the State or foreign laws; but submitted by the Constitution to the Judicial power of the United States; the Judicial power being in several instances, extended beyond the Legislative power of the United States.

To this explanation of the text, the following observations may be added:

The expression, "cases in law and equity," is manifestly confined to cases of a civil nature; and would exclude cases of criminal jurisdiction. Criminal cases in law and equity would be a language unknown to the law.

The succeeding paragraph of the same section is in harmony with this construction. It is in these words: "In all cases affecting Ambassadors, or other public Ministers, and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases [including cases of law and equity arising under the Constitution] the Supreme Court shall have *appellate* jurisdiction both as to law and *fact*; with such exceptions, and under such regulations, as Congress shall make."

This paragraph, by expressly giving an *appellate* jurisdiction, in cases of law and equity arising under the Constitution, to *fact*, as well as to law, clearly excludes criminal cases, where the trial by jury is secured; because the fact in such cases, is not a subject of appeal. And, although the appeal is liable to such *exceptions* and regulations as Congress may adopt, yet it is not to be supposed that an *exception of all* criminal cases could be contemplated; as well because a discretion in Congress to make or omit the exception would be improper, as because it would have been unnecessary. The exception could as easily have been made by the Constitution itself, as referred to the Congress.

Once more; the amendment last added to the Constitution, deserves attention as throwing light on this subject. "The Judicial power of the United States shall not be construed to extend to any suit in *law* or *equity*, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign power." As it will not be pretended that any criminal proceeding could take place against a State; the terms *law* or *equity*, must be understood as appropriate to *civil* in exclusion of *criminal* cases.

From these considerations, it is evident that this part of the Constitution, even if it could be applied at all, to the purpose for which it has been cited, would not include any cases whatever of a criminal nature; and consequently, would not authorise the inference from it, that the Judicial authority extends to *offences* against the common law, as offences arising under the Constitution.

It is further to be considered, that even if this part of the Constitution could be strained into an application to every common law case, criminal as well as civil, it could have no effect in justifying the Sedition Act; which is an exercise of Legislative and not of Judicial power; and it is the Judicial power, only, of which the extent is defined in this part of the constitution.

There are two passages in the Constitution, in which a description of the law of the United States is found. The first is contained in Art. III. Sec. 2. in the words following: "This Constitution, the laws of

the U. S. and treaties made, or which shall be made under this authority." The second is contained in the second paragraph of Article VI. as follows: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States shall be the supreme law of the land." The first of these descriptions was meant as a guide to the Judges of the United States; the second as a guide to the Judges of the several States. Both of them consist of an enumeration, which was evidently meant to be precise and complete. If the common law had been understood to be a law of the United States, it is not possible to assign a satisfactory reason why it was not expressed in the enumeration.

In aid of these objections, the difficulties and confusion inseparable from a constructive introduction of the common law, would afford powerful reasons against it.

Is it to be the common law with, or without the British Statutes?

If without the statutory amendments, the vices of the code would be insupportable.

If with these amendments, what period is to be fixed for limiting the British authority over our laws?

Is it to be the date of the eldest or the youngest of the colonies?

Or are the dates to be thrown together, and a medium deduced?

Or is our independence to be taken for the date?

Is, again, regard to be had to the various changes in the common law made by the local codes of America?

Is regard to be had to such changes, subsequent, as well as prior, to the establishment of the Constitution?

Is regard to be had to future, as well as past changes?

Is the law to be different in every State, as differently modified by its code; or are the modifications of any particular State to be applied to all?

And on the latter supposition, which among the State codes would form the standard?

Questions of this sort might be multiplied with as much ease as there would be difficulty in answering them.

The consequences flowing from the proposed construction, furnish other objections equally conclusive; unless the text were peremptory in its meaning, and consistent with other parts of the instrument.

These consequences may be in relation to the Legislative authority of the United States; to the Executive authority; to the Judicial authority; and to the Governments of the several States.

If it be understood that the common law is established by the Constitution, it follows that no part of the law can be altered by the Legislature; such of the statutes already passed, as may be repugnant thereto, would be nullified; particularly the "Sedition Act" itself, which boasts of being a melioration of the common law; and the whole code, with all its incongruities, barbarisms, and bloody maxims, would be inviolably saddled on the good people of the United States.

Should this consequence be rejected, and the common law be held, like other laws, liable to revision and alteration, by the authority of Congress, it then follows, that the authority of Congress is co-extensive with the objects of common law; that is to say, with every object of legislation. For, to every such object, does some branch or other of the

common law extend. The authority of Congress would, therefore, be no longer under the limitations marked out in the Constitution. They would be authorised to legislate in all cases whatsoever.

In the next place, as the President possesses the executive powers of the Constitution, and is to see that the laws be faithfully executed, his authority also must be co-extensive with every branch of the common law. The additions which this would make to his power, though not readily to be estimated, claim the most serious attention.

This is not all; it will merit the most profound consideration, how far an indefinite admission of the common law, with a latitude in construing it, equal to the construction by which it is deduced from the Constitution, might draw after it the various prerogatives making part of the unwritten law of England. The English Constitution itself, is nothing more than a composition of unwritten laws and maxims.

In the third place, whether the common law be admitted as of legal or of constitutional obligation, it would confer on the Judicial department a discretion little short of a legislative power.

On the supposition of its having a constitutional obligation, this power in the Judges would be permanent and irremediable by the Legislature. On the other supposition, the power would not expire until the Legislature should have introduced a full system of statutory provisions. Let it be observed, too, that besides all the uncertainties above enumerated, and which present an immense field for judicial discretion, it would remain with the same department to decide what parts of the common law would, and what would not, be properly applicable to the circumstances of the United States.

A discretion of this sort has always been lamented as incongruous and dangerous, even in the Colonial and State courts; although so much narrowed by positive provisions in the local codes on all the principal subjects embraced by the common law. Under the United States, where so few laws exist on those subjects, and where so great a lapse of time must happen before the vast chasm could be supplied, it is manifest that the power of the judges over the law, would, in fact, erect them into legislators; and, that for a long time, it would be impossible for the citizens to conjecture, either what was, or would be law.

In the last place, the consequence of admitting the common law as the law of the United States, on the authority of the individual States, is as obvious as it would be fatal. As this law relates to every subject of legislation, and would be paramount to the Constitutions and laws of the States, the admission of it would overwhelm the residuary sovereignty of the States, and by one constructive operation, new-model the whole political fabric of the country.

From the review thus taken of the situation of the American colonies, prior to their independence, of the effect of this event on their situation, of the nature and import of the articles of confederation, of the true meaning of the passage in the existing Constitution from which the common law has been deduced, of the difficulties and uncertainties incident to the doctrine, and of its vast consequences in extending the powers of the Federal Government, and in superseding the authorities of the State Governments, the committee feel the utmost confidence in concluding that the common law never was, nor by any fair construction ever can be, deemed a law for the American people as one community; and

they indulge the strongest expectation that the same conclusion will finally be drawn by all candid and accurate inquirers into the subject. It is, indeed, distressing to reflect that it ever should have been made a question, whether the Constitution, on the whole face of which is seen so much labor to enumerate and define the several objects of Federal power, could intend to introduce in the lump, in an indirect manner, and by a forced construction of a few phrases, the vast and multifarious jurisdiction involved in the common law; a law filling so many ample volumes, a law overspreading the entire field of legislation, and a law that would sap the foundation of the Constitution as a system of limited and specified powers. A severer reproach could not, in the opinion of the committee, be thrown on the Constitution, on those who framed, or on those who established it, than such a supposition would throw on them.

The argument, then, drawn from the common law, on the ground of its being adopted or recognised by the Constitution, being inapplicable to the Sedition Act, the committee will proceed to examine the other arguments which have been founded on the Constitution.

They will waste but little time on the attempt to cover the act by the preamble to the Constitution, it being contrary to every acknowledged rule of construction, to set up this part of an instrument, in opposition to the plain meaning expressed in the body of the instrument. A preamble usually contains the general motives or reasons for the particular regulations or measures which follow it, and is always understood to be explained and limited by them. In the present instance, a contrary interpretation would have the inadmissible effect of rendering nugatory or improper, every part of the Constitution which succeeds the preamble.

The paragraph in Art. 1, Sec. 8, which contains the power to lay and collect taxes, duties, imposts and excises; to pay the debts, and provide for the common defence and general welfare, having been already examined, will also require no particular attention in this place. It will have been seen that, in its fair and consistent meaning, it cannot enlarge the enumerated powers vested in Congress.

The part of the Constitution which seems most to be recurred to, in defence of the "Sedition Act," is the last clause of the above section, empowering Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

The plain import of this clause is, that Congress shall have all the incidental or instrumental powers necessary and proper for carrying into execution all the express powers, whether they be vested in the government of the United States, more collectively, or in the several departments or officers thereof. It is not a grant of new powers to Congress, but merely a declaration, for the removal of all uncertainty, that the means of carrying into execution those otherwise granted, are included in the grant.

Whenever, therefore, a question arises concerning the constitutionality of a particular power, the first question is, whether the power be expressed in the Constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be, whether it is properly an incident to an express power, and necessary to its execution. If it be,

it may be exercised by Congress. If it be not, Congress cannot exercise it.

Let the question be asked, then, whether the power over the press, exercised in the "Sedition Act," be found among the powers expressly vested in the Congress? This is not pretended.

Is there any express power, for executing which it is a necessary and proper power?

The power which has been selected as least remote in answer to this question, is that "of suppressing insurrections;" which is said to imply a power to *prevent* insurrections, by punishing whatever may *lead* or *tend* to them. But it surely cannot, with the least plausibility, be said that the regulation of the press, and a punishment of libels, are exercises of a power to suppress insurrections. The most that could be said, would be, that the punishment of libels, if it had the tendency ascribed to it, might prevent the occasion of passing or executing laws, necessary and proper for the suppression of insurrections.

Has the Federal Government no power, then, to prevent as well as to punish resistance to the laws?

They have the power which the Constitution deemed most proper in their hands for the purpose. The Congress has power, before it happens, to pass laws for punishing it; and the Executive and Judiciary have power to enforce those laws when it does happen.

It must be recollected by many, and could be shown to the satisfaction of all, that the construction here put on the terms "necessary and proper," is precisely the construction which prevailed during the discussions and ratifications of the Constitution. It may be added, and cannot too often be repeated, that it is a construction absolutely necessary to maintain their consistency with the peculiar character of the government, as possessed of particular and definite powers only; not of the general and indefinite powers vested in ordinary governments. For if the power to *suppress insurrections*, includes a power to *punish libels*, or if the power to *punish*, includes a power to *prevent*, by all the means that may have that *tendency*, such is the relation and influence among the most remote subjects of legislations, that a power over a very few would carry with it a power over all. And it must be wholly immaterial, whether unlimited powers be exercised under the name of unlimited powers, or be exercised under the name of unlimited means of carrying into execution, limited powers.

This branch of the subject will be closed with a reflection which must have weight with all; but more especially with those who place peculiar reliance on the judicial exposition of the Constitution, as the bulwark provided against undue extensions of the legislative power. If it be understood that the powers implied in the specified powers, have an immediate and appropriate relation to them, as means necessary and proper for carrying them into execution, questions on the constitutionality of laws passed for this purpose, will be of a nature sufficiently precise and determinate for judicial cognizance and control. If, on the other hand, Congress are not limited in the choice of means by any such appropriate relation of them to the specified powers; but may employ all such means they may deem fitted to *prevent* as well as to *punish* crimes subjected to their authority, such as may have a *tendency* only to *promote* an object for which they are authorized to provide; every one must perceive that questions relating to means of this sort, must be

questions for mere policy and expediency; on which legislative discretion alone can decide, and from which the judicial interposition and control are completely excluded.

II. The next point which the resolution requires to be proved is, that the power over the press exercised by the Sedition Act, is positively forbidden by one of the amendments to the Constitution.

The amendment stands in these words—"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or *abridging the freedom of speech, or of the press*; or the right of the people peaceably to assemble and to petition the government for a redress of grievances."

In the attempts to vindicate the "Sedition Act," it has been contended—1. That the "freedom of the press" is to be determined by the meaning of these terms in the common law. 2. That the article supposes the power over the press to be in Congress, and prohibits them only from *abridging* the freedom allowed to it by the common law.

Although it will be shown, on examining the second of these positions, that the amendment is a denial to Congress of all power over the press, it may not be useless to make the following observations on the first of them.

It is deemed to be a sound opinion, that the Sedition Act, in its definition of some of the crimes created, is an abridgment of the freedom of publication, recognized by principles of the common law in England.

The freedom of the press, under the common law, is, in the defences of the Sedition Act, made to consist in an exemption from all *previous* restraint on printed publications, by persons authorized to inspect and prohibit them. It appears to the Committee that this idea of the freedom of the press can never be admitted to be the American idea of it; since a law inflicting penalties on printed publications, would have a similar effect with a law authorizing a previous restraint on them. It would seem a mockery to say that no laws should be passed preventing publications from being made, but that laws might be passed for punishing them in case they should be made.

The essential difference between the British Government and the American Constitutions, will place this subject in the clearest light.

In the British Government, the danger of encroachments on the rights of the people, is understood to be confined to the executive magistrate. The representatives of the people in the legislature, are not only exempt themselves from distrust, but are considered as sufficient guardians of the rights of their constituents against the danger from the executive. Hence it is a principle, that the Parliament is unlimited in its power; or, in their own language, is omnipotent. Hence, too, all the ramparts for protecting the rights of the people, such as their Magna Charta, their Bill of Rights, &c., are not reared against the Parliament, but against the royal prerogative. They are merely legislative precautions against executive usurpations. Under such a government as this, an exemption of the press from previous restraint by licensers appointed by the king, is all the freedom that can be secured to it.

In the United States the case is altogether different. The people, not the government, possess the absolute sovereignty. The legislature, no less than the executive, is under limitations of power. Encroachments are regarded as possible, from the one as well as from the other. Hence in the United States, the great and essential rights of the people

are secured against legislative, as well as executive ambition. They are secured, not by laws paramount to prerogative, but by Constitutions paramount to laws. This security of the freedom of the press requires that it should be exempt, not only from previous restraint by the executive, as in Great Britain, but from legislative restraint also; and this exemption to be effectual, must be an exemption, not only from the previous inspection of licenses, but from the subsequent penalty of laws.

The state of the press, therefore, under the common law, cannot in this point of view be the standard of its freedom in the United States.

But there is another view under which it may be necessary to consider this subject. It may be alledged that although the security for the freedom of the press be different in Great Britain and this country, being a legal security only in the former, and a constitutional security in the latter; and although there may be a further difference, in an extension of the freedom of the press here, beyond an exemption from previous restraint, to an exemption from subsequent penalties also, yet that the actual legal freedom of the press, under the common law, must determine the degree of freedom which is meant by the terms, and which is constitutionally secured against both previous and subsequent restraint.

The Committee are not aware of the difficulty of all general questions, which may turn on the proper boundary between the liberty and licentiousness of the press. They will leave it, therefore, for consideration only, how far the difference between the nature of the British Government, and the nature of the American Governments, and the practice under the latter, may show the degree of rigor in the former to be inapplicable to, and not obligatory in, the latter.

The nature of governments elective, limited and responsible in all their branches, may well be supposed to require a greater freedom of animadversion than might be tolerated by the genius of such a government as that of Great Britain. In the latter, it is a maxim that the king, an hereditary, not a responsible magistrate, can do no wrong; and that the legislature, which in two thirds of its composition is also hereditary, not responsible, can do what it pleases. In the United States the executive magistrates are not held to be infallible, nor the legislature to be omnipotent; and both being elective, are both responsible. Is it not natural and necessary, under such different circumstances, that a different degree of freedom, in the use of the press, should be contemplated?

Is not such an inference favored by what is observable in Great Britain itself? Notwithstanding the general doctrine of the common law, on the subject of the press, and the occasional punishment of those who use it with a freedom offensive to the government, it is well known, that with respect to the responsible members of the government, where the reasons operating here become applicable there, the freedom exercised by the press, and protected by public opinion, far exceeds the limits prescribed by the ordinary rules of law. The ministry, who are responsible to impeachment, are at all times animadverted on by the press with peculiar freedom; and during the elections for the House of Commons, the other responsible part of the government, the press is employed with as little reserve towards the candidates.

The practice in America must be entitled to much more respect. In every state, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men of every description, which has not been confined to the strict limits of the common law. On

this footing the freedom of the press has stood ; on this foundation it yet stands. And it will not be a breach, either of truth or of candor, to say, that no persons or presses are in the habit of more unrestrained animadversions on the proceedings and functionaries of the state governments, than the persons and presses most zealous in vindicating the act of Congress for punishing similar animadversions on the Government of the United States.

The last remark will not be understood as claiming for the state governments an immunity greater than they have heretofore enjoyed. Some degree of abuse is inseparable from the proper use of every thing ; and in no instance is this more true, than in that of the press. It has accordingly been decided by the practice of the states, that it is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigor of those yielding the proper fruits. And can the wisdom of this policy be doubted by any one who reflects, that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity, over error and oppression ; who reflect that to the same beneficent source, the United States owe much of the lights which conducted them to the ranks of a free and independent nation ; and which have improved their political system, into a shape so auspicious to their happiness. Had "Sedition Acts," forbidding every publication that might bring the constituted agents into contempt or disrepute, or that might excite the hatred of the people against the authors of unjust or pernicious measures, been uniformly enforced against the press ; might not the United States have been languishing at this day, under the infirmities of a sickly confederation ? Might they not, possibly, be miserable colonies, groaning under a foreign yoke ?

To these observations one fact will be added, which demonstrates that the common law cannot be admitted as the *universal* expositor of American terms, which may be the same with those contained in that law. The freedom of conscience, and of religion, are found in the same instruments which assert the freedom of the press. It will never be admitted that the meaning of the former, in the common law of England, is to limit their meaning in the United States.

Whatever weight may be allowed to these considerations, the Committee do not, however, by any means intend to rest the question on them. They contend that the article of the amendment, instead of supposing in Congress a power that might be exercised over the press, provided its freedom was not abridged, was meant as a positive denial to Congress, of any power whatever on the subject.

To demonstrate that this was the true object of the article, it will be sufficient to recall the circumstance which led to it, and to refer to the explanation accompanying the article.

When the Constitution was under the discussions which preceded its ratification, it is well known that great apprehensions were expressed by many, lest the omission of some positive exception from the powers delegated, of certain rights, and of the freedom of the press particularly, might expose them to the danger of being drawn by construction within some of the powers vested in Congress ; more especially of the power to make all laws necessary and proper for carrying their other powers into execution. In reply to this objection, it was invariably urged to be a fundamental and characteristic principle of the Constitution,

that all powers not given by it were reserved: that no powers were given beyond those enumerated in the Constitution, and such as were fairly incident to them; that the power over the rights in question, and particularly over the press, was neither among the enumerated powers nor incident to any of them; and consequently that an exercise of any such power would be manifest usurpation. It is painful to remark how much the arguments now employed in behalf of the Sedition Act, are at variance with the reasoning which then justified the Constitution, and invited its ratification.

From this posture of the subject resulted the interesting question in so many of the Conventions, whether the doubts and dangers ascribed to the Constitution, should be removed by any amendments previous to the ratification, or be postponed, in confidence that as far as they might be proper, they would be introduced in the form provided by the Constitution. The latter course was adopted; and in most of the states ratifications were followed by propositions and instructions for rendering the Constitution more explicit, and more safe to the rights not meant to be delegated by it. Among those rights, the freedom of the press, in most instances, is particularly and emphatically mentioned. The firm and very pointed manner in which it is asserted in the proceedings of the Convention of this State will be hereafter seen.

In pursuance of the wishes thus expressed, the first Congress that assembled under the Constitution proposed certain amendments, which have since, by the necessary ratifications, been made a part of it; among which amendments is the article containing, among other prohibitions on the Congress, an express declaration that they should make no law abridging the freedom of the press.

Without tracing farther the evidence on this subject, it would seem scarcely possible to doubt, that no power whatever over the press was supposed to be delegated by the Constitution, as it originally stood; and that the amendment was intended as a positive and absolute reservation of it.

But the evidence is still stronger. The proposition of amendments made by Congress, is introduced in the following terms:

"The Conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstructions or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the government, will best insure the beneficent ends of its institutions."

Here is the most satisfactory and authentic proof that the several amendments proposed were to be considered as either declaratory or restrictive; and whether the one or the other, as corresponding with the desire expressed by a number of the states, and as extending the ground of public confidence in the government.

Under any other construction of the amendment relating to the press, than that it declared the press to be wholly exempt from the power of Congress, the amendment could neither be said to correspond with the desire expressed by a number of the states, nor be calculated to extend the ground of public confidence in the government.

Nay, more; the construction employed to justify the "Sedition Act," would exhibit a phenomenon without a parallel in the political world. It would exhibit a number of respectable states, as denying, first, that

any power over the press was delegated by the Constitution; as proposing, next, that an amendment to it should explicitly declare that no such power was delegated; and, finally, as concurring in an amendment actually recognizing or delegating such a power.

Is then the Federal Government, it will be asked, destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libellous attacks which may be made on those who administer it?

The Constitution alone can answer this question. If no such power be expressly delegated, and if it be not both necessary and proper to carry into execution an express power; above all, if it be expressly forbidden, by a declaratory amendment to the Constitution, the answer must be that the Federal Government is destitute of all such authority.

And might it not be asked, in turn, whether it is not more probable under all the circumstances which have been reviewed, that the authority should be withheld by the Constitution, than that it should be left to a vague and violent construction: whilst so much pains were bestowed in enumerating other powers, and so many less important powers are included in the enumeration?

Might it not be likewise asked, whether the anxious circumspection which dictated so many *peculiar* limitations on the general authority, would be unlikely to exempt the press altogether from that authority? The peculiar magnitude of some of the powers necessarily committed to the Federal Government; the peculiar duration required for the functions of some of its departments; the peculiar distance of the seat of its proceedings from the great body of its constituents; and the peculiar difficulty of circulating an adequate knowledge of them through any other channel; will not these considerations, some or other of which produced other exceptions from the powers of ordinary governments, altogether account for the policy of binding the hand of the Federal Government, from touching the channel which alone can give efficacy to its responsibility to its constituents: and of leaving those who administer it to a remedy for their injured reputations, under the same laws, and in the same tribunals which protect their lives, their liberties, and their properties?

But the question does not turn either on the wisdom of the Constitution, or on the policy which gave rise to its particular organization. It turns on the actual meaning of the instrument; by which it has appeared that a power over the press is clearly excluded from the number of powers delegated to the Federal Government.

3. And in the opinion of the Committee, well may it be said, as the resolution concludes with saying, that the unconstitutional power exercised over the press by the "Sedition Act," ought, "more than any other, to produce universal alarm; because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right."

Without scrutinizing minutely into all the provisions of the "Sedition Act," it will be sufficient to cite so much of section 2, as follows:—"And be it further enacted, that if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering, or publishing any false, scandalous, malicious writing or writings against the Government of the United States, or either House of the Congress

of the United States, with an intent to defame the said Government, or either House of the said Congress, or the President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either, or any of them, the hatred of the good people of the United States, &c. Then such person being thereof convicted before any Court of the United States, having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years."

1. On this part of the act the following observations present themselves:

2. The Constitution supposes that the President, the Congress, and each of its Houses may not discharge their trusts, either from defect of judgment or other causes. Hence, they are all made responsible to their constituents, at the returning periods of election; and the President, who is singly entrusted with very great powers, is, as a further guard, subjected to an intermediate impeachment.

2. Should it happen, as the Constitution supposes it may happen, that either of these branches of the government may not have duly discharged its trust; it is natural and proper that, according to the cause and degree of their faults, they should be brought into contempt or disrepute, and incur the hatred of the people.

3. Whether it has, in any case, happened that the proceedings of either, or all of those branches, evinces such a violation of duty as to justify a contempt, a disrepute, or hatred among the people, can only be determined by a free examination thereof, and a free communication among the people thereon.

4. Whenever it may have actually happened that proceedings of this sort are chargeable on all or either of the branches of the government, it is the duty as well as right of intelligent and faithful citizens to discuss and promulge them freely, as well as control them by the censorship of the public opinion, as promote a remedy according to the rules of the Constitution. And it cannot be avoided that those who are to apply the remedy must feel in some degree a contempt or hatred against the transgressing party.

5. As the act was passed on July 14, 1798, and is to be in force until March 3, 1801, it was of course, that during its continuance two elections of the entire House of Representatives, an election of a part of the Senate, and an election of a President were to take place.

6. That consequently, during all these elections, intended by the Constitution to preserve the purity, or to purge the faults of the Administration, the great remedial rights of the people were to be exercised, and the responsibility of their public agents to be screened under the penalties of this act.

May it not be asked of every intelligent friend to the liberties of his country, whether the power exercised in such an act as this, ought not to produce great and universal alarm? Whether a rigid execution of such an act, in time past, would not have repressed that information and communication among the people which is indispensable to the just exercise of their electoral rights? And whether such an act, if made perpetual, and enforced with rigor, would not, in time to come, either destroy our free system of government, or prepare a convulsion that might prove equally fatal to it?

In answer to such questions, it has been pleaded that the writings and publications forbidden by the act, are those only which are false and malicious, and intended to defame; and merit is claimed for the privilege allowed to authors to justify, by proving the truth of their publications, and for the limitations to which the sentence of fine and imprisonment is subjected.

To those who concurred in the act, under the extraordinary belief that the option lay between the passing of such an act, and leaving in force the common law of libels, which punishes truth equally with falsehood; and submits the fine and imprisonment to the indefinite discretion of the court, the merit of good intentions ought surely not to be refused. A like merit may perhaps be due for the discontinuance of the *corporal punishment* which the common law also leaves to the discretion of the court. This merit of *intention*, however, would have been greater, if the several mitigations had not been limited to so short a period; and the apparent inconsistency would have been avoided between justifying the act at one time, by contrasting it with the rigors of the common law, otherwise in force; and at another time by appealing to the nature of the crisis, as requiring the temporary rigor exerted by the act.

But whatever may have been the meritorious intentions of all or any who contributed to the Sedition Act, a very few reflections will prove that its baleful tendency is little diminished by the privilege of giving in evidence the truth of the matter contained in political writings.

In the first place, where simple and naked facts alone are in question, there is sufficient difficulty in some cases, and sufficient trouble and vexation in all, of meeting a prosecution from the government, with the full and formal proof necessary in a court of law.

But in the next place it must be obvious, to the plainest minds, that opinions and inferences, and conjectural observations, are not only in many cases inseparable from the facts, but may often be more the objects of the prosecution than the facts themselves; or may even be altogether abstracted from particular facts; and that opinions and inferences, and conjectural observations, cannot be subjects of that kind of proof which appertains to facts before a court of law.

Again: It is no less obvious, that the *intent* to defame or bring into contempt or disrepute, or hatred, which is made a condition of the offence created by the act, cannot prevent its pernicious influence on the freedom of the press. For, omitting the inquiry, how far the malice of the intent is an inference of the law from the mere publication, it is manifestly impossible to punish the intent to bring those who administer the government into disrepute or contempt, without striking at the right of freely discussing public characters and measures: because those who engage in such discussions must expect and *intend* to excite these unfavorable sentiments, so far as they may be thought to be deserved. To prohibit the intent to excite those unfavorable sentiments against those who administer the government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them is equivalent to a prohibition of discussions having that tendency and effect; which again is equivalent to a protection of those who administer the government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it by free animadversions on their characters and conduct. Nor can there be a doubt, if those in public trust be shielded by penal laws from such strictures of the press as may expose them to

contempt or disrepute, or hatred, where they may deserve it, that in exact proportion as they may deserve to be exposed, will be the certainty and criminality of the intent to expose them, and the vigilance of prosecuting and punishing it; nor a doubt that a government thus intrenched in penal statutes against the just and natural effects of a culpable administration, will easily evade the responsibility which is essential to a faithful discharge of its duty.

Let it be recollected, lastly, that the right of electing the members of the government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidates for public trust; and on the equal freedom, consequently of examining and discussing these merits and demerits of the candidates respectively. It has been seen that a number of important elections will take place while the act is in force, although it should not be continued beyond the term to which it is limited. Should there happen, then, as is extremely probable in relation to some or other of the branches of the government, to be competitions between those who are, and those who are not, members of the government, what will be the situations of the competitors? Not equal; because the characters of the former will be covered by the "Sedition Act" from animadversions exposing them to disrepute among the people; whilst the latter may be exposed to the contempt and hatred of the people, without a violation of the act. What will be the situation of the people? Not free; because they will be compelled to make their election between competitors, whose pretensions they are not permitted by the act equally to examine, to discuss, and to ascertain. And from both these situations will not those in power derive an undue advantage for continuing themselves in it; which, by impairing the right of election, endangers the blessings of the government founded on it?

It is with justice, therefore, that the General Assembly have affirmed in the resolution, as well that the right of freely examining public characters and measures, and of communication thereon, is the only effectual guardian of every other right; as that this particular right is levelled at by the power exercised in the "Sedition Act."

The resolution next in order is as follows:

That this state having by its Convention, which ratified the Federal Constitution, expressly declared, that among other essential rights, "the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States," and from its extreme anxiety to guard these rights from every possible attack of sophistry and ambition having with other states recommended an amendment for that purpose, which amendment was, in due time, annexed to the Constitution; it would mark a reproachful inconsistency and criminal degeneracy, if an indifference were shown to the most palpable violation of one of the rights thus declared and secured; and to the establishment of a precedent which may be fatal to the other.

To place this resolution in its just light, it will be necessary to recur to the act of ratification by Virginia, which stands in the ensuing form:

We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the General Assembly, and now met in Convention, having fully and freely investigated and discussed the proceedings of the Federal Convention, and being prepared as well as

the most mature deliberation hath enabled us, to decide thereon; DO, in the name and in the behalf of the people of Virginia, declare and make known, that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them, whenever the same shall be perverted to their injury or oppression; and that every power not granted thereby, remains with them, and at their will. That, therefore, no right of any denomination can be cancelled, abridged, restrained, or modified, by the Congress by the Senate, or House of Representatives acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States.

Here is an express and solemn declaration by the Convention of the State, that they ratified the Constitution in the sense that no right of any denomination can be cancelled, abridged, restrained, or modified, by the Government of the United States, or any part of it, except in those instances in which power is given by the Constitution, and in the sense particularly, "that among other essential rights, the liberty of conscience and freedom of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States."

Words cannot well express, in a fuller or more forcible manner, the understanding of the Convention, that the liberty of conscience, and the freedom of the press, were *equally and completely* exempted from all authority whatever of the United States.

Under an anxiety to guard more effectually these rights against every possible danger, the Convention, after ratifying the Constitution, proceeded to prefix to certain amendments proposed by them, a declaration of rights, in which are two articles providing, the one for the liberty of conscience, the other for the freedom of speech and of the press.

Similar recommendations having proceeded from a number of other states; and Congress, as has been seen, having in consequence thereof, and with a view to extend the ground of public confidence proposed among other declaratory and restrictive clauses, a clause expressly securing the liberty of conscience and of the press; and Virginia having concurred in the ratifications which made them a part of the Constitution; it will remain with a candid public to decide whether it would not mark an inconsistency and degeneracy, if an indifference were now shown to a palpable violation of one of those rights, the freedom of the press; and to a precedent therein which may be fatal to the other, the free exercise of religion.

That the precedent established by the violation of the former of these rights, may, as is affirmed by the resolution, be fatal to the latter, appears to be demonstrable by a comparison of the grounds on which they respectively rest; and from the scope of reasoning by which the power of the former has been vindicated.

First, Both of these rights, the liberty of conscience and of the press, rest equally on the original ground of not being delegated by the Constitution, and consequently withheld from the government. Any construction, therefore, that would attack this original security for the one, must have the like effect on the other.

Secondly, They are both equally secured by the supplement to the

Constitution; being both included in the same amendment made at the same time, and by the same authority: Any construction or argument, then, which would turn the amendment into a grant or acknowledgement of power with respect to the press, might be equally applied to the freedom of religion.

Thirdly, If it be admitted that the extent of the freedom of the press, secured by the amendment, is to be measured by the common law on this subject, the same authority may be resorted to for the standard which is to fix the extent of the "free exercise of religion." It cannot be necessary to say what this standard would be, whether the common law be taken solely as the unwritten, or as varied by the written law of England.

Fourthly, If the words and phrases in the amendment are to be considered as chosen with a studied discrimination which yields an argument for a power over the press, under the limitation that its freedom be not abridged; the same argument results from the same consideration for a power over the exercise of religion, under the limitation that its freedom be not prohibited.

For, if Congress may regulate the freedom of the press provided they do not abridge it, because it is said only, "they shall not abridge it," and is not said, "they shall make no law respecting it," the analogy of reasoning is conclusive, that Congress may *regulate* and even *abridge* the free exercise of religion, provided they do not *prohibit* it; because it is said only "they shall not prohibit it;" and is not said, "they shall make no law *respecting*, or no law *abridging* it."

The General Assembly were governed by the clearest reason, then, in considering the "Sedition Act," which legislates on the freedom of the press, as establishing a precedent that may be fatal to the liberty of conscience: and it will be the duty of all, in proportion as they value the security of the latter, to take the alarm at every encroachment on the former.

The two concluding resolutions only remain to be examined. They are in the words following:

That the good people of the Commonwealth, having ever felt and continuing to feel the most sincere affection for their brethren of the other states; the truest anxiety for establishing and perpetuating the union of all; and the most scrupulous fidelity to that Constitution, which is the pledge of mutual friendship, and the instrument of mutual happiness; the General Assembly doth solemnly appeal to the like dispositions in the other states, in confidence that they will concur with this Commonwealth in declaring as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for co-operating with this state in maintaining unimpaired the authorities, rights, and liberties reserved to the states respectively, or to the people.

That the Governor be desired to transmit a copy of the foregoing resolutions to the executive authority of each of the other states, with a request that the same may be communicated to the Legislature thereof; and that a copy be furnished to each of the Senators and Representatives, representing this State in the Congress of the United States.

The fairness and regularity of the course of proceeding here pursued, have not protected it against objections even from sources too respectable to be disregarded.

It has been said that it belongs to the Judiciary of the United States, and not to the State Legislatures, to declare the meaning of the Federal Constitution.

But a declaration that proceedings of the Federal Government are not warranted by the Constitution, is a novelty neither among the citizens, nor among the Legislatures of the States; nor are the citizens or the Legislature of Virginia singular in the example of it.

Nor can the declarations of either, whether affirming or denying the constitutionality of measures of the Federal Government, or whether made before or after judicial decisions thereon, be deemed in any point of view an assumption of the office of the judge. The declarations, in such cases, are expressions of opinion, unaccompanied with any other effect than what they may produce on opinion, by exciting reflection. The expositions of the judiciary, on the other hand, are carried into immediate effect by force. The former may lead to a change in the legislative expression of the general will; possibly to a change in the opinion of the judiciary; the latter enforces the general will, whilst that will and that opinion continue unchanged.

And if there be no impropriety in declaring the unconstitutionality of proceedings in the Federal Government, where can be the impropriety of communicating the declaration to other states, and inviting their concurrence in a like declaration? What is allowable for one must be allowable for all; and a free communication among the states, where the Constitution imposes no restraint, is as allowable among the State Governments as among other public bodies or private citizens. This consideration derives a weight that cannot be denied to it, from the relation of the State Legislatures to the Federal Legislature as the immediate constituents of one of its branches.

The Legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two thirds of the whole number, in application to Congress for the purpose. When new states are to be formed by a junction of two or more states or parts of states, the Legislatures of the states concerned, are, as well as Congress, to concur in the measure. The states have a right also to enter into agreements or compacts, with the consent of Congress. In all such cases a communication among them results from the object which is common to them.

It is lastly to be seen, whether the confidence expressed by the resolution, that the *necessary and proper measures* would be taken by the other states for co-operating with Virginia in maintaining the rights reserved to the states, or to the people, be in any degree liable to the objections which have been raised against it.

If it be liable to objection, it must be because either the object or the means are objectionable.

The object being to maintain what the Constitution has ordained, is in itself a laudable object.

The means are expressed in the terms, "the necessary and proper measures." A proper object was to be pursued, by means both necessary and proper.

To find an objection, then, it must be shown that some meaning was annexed to these general terms which was not proper; and, for this purpose, either that the means used by the General Assembly were an

example of improper means, or that there were no proper means to which the terms could refer.

In the example given by the state, of declaring the Alien and Sedition Acts to be unconstitutional, and of communicating the declaration to other states, no trace of improper means has appeared. And if the other states had concurred in making a like declaration, supported too by the numerous applications flowing immediately from the people, it can scarcely be doubted that these simple means would have been as sufficient as they are unexceptionable.

It is no less certain that other means might have been employed, which are strictly within the limits of the Constitution. The Legislatures of the States might have made a direct representation to Congress, with a view to obtain a rescinding of the two offensive acts; or, they might have represented to their respective Senators in Congress their wish that two thirds thereof would propose an explanatory amendment to the Constitution; or two thirds of themselves, if such had been their option, might, by an application to Congress, have obtained a Convention for the same object.

These several means, though not equally eligible in themselves, or probably to the states, were all constitutionally open for consideration. And if the General Assembly, after declaring the two acts to be unconstitutional, the first and most obvious proceeding on the subject, did not undertake to point out to the other states a choice among the farther measures that might become necessary and proper, the reserve will not be misconstrued by liberal minds into any culpable imputation.

These observations appear to form a satisfactory reply to every objection which is not founded on a misconception of the terms employed in the resolutions. There is one other, however, which may be of too much importance not to be added. It cannot be forgotten that among the arguments addressed to those who apprehend danger to liberty from the establishment of the General Government over so great a country, the appeal was emphatically made to the intermediate existence of the State Governments, between the people and that Government, to the vigilance with which they would descry the first symptoms of usurpation, and to the promptitude with which they would sound the alarm to the public. This argument was probably not without its effect; and if it was a proper one then, to recommend the establishment of the Constitution, it must be a proper one, now, to assist in its interpretation.

The only part of the two concluding resolutions that remains to be noticed is the repetition in the first of that warm affection to the union and its members, and of that scrupulous fidelity to the Constitution, which have been invariably felt by the people of this state. As the proceedings were introduced with these sentiments, they could not be more properly closed than in the same manner. Should there be any so far misled as to call in question the sincerity of these professions, whatever regret may be excited by the error, the General Assembly cannot descend into a discussion of it. Those who have listened to the suggestion, can only be left to their own recollection of the part which this state has borne in the establishment of our national independence, in the establishment of our National Constitution, and in maintaining under it the authority and laws of the Union, without a single exception of internal resistance or commotion. By recurring to

the facts, they will be able to convince themselves that the Representatives of the people of Virginia must be above the necessity of opposing any other shield to attacks on their national patriotism than their own conscientiousness, and the justice of an enlightened public, who will perceive in the resolutions themselves the strongest evidence of attachment both to the Constitution and to the Union, since it is only by maintaining the different governments and departments within their respective limits that the blessings of either can be perpetuated.

The extensive view of the subject, thus taken by the Committee, has led them to report to the House, as the result of the whole, the following resolution:

Resolved, That the General Assembly, having carefully and respectfully attended to the proceedings of a number of the states, in answer to their resolutions of December 21, 1798, and having accurately and fully re-examined and re-considered the latter, find it to be their indispensable duty, to adhere to the same, as founded in truth, as consonant with the Constitution, and as conducive to its preservation; and more especially to be their duty to renew, as they do hereby renew, their protest against "the Alien and Sedition Acts," as palpable and alarming infractions of the Constitution.

KENTUCKY LEGISLATURE.

IN THE HOUSE OF REPRESENTATIVES.

November 10, 1798.

The House, according to the standing order of the day, resolved itself into a Committee of the whole, on the state of the Commonwealth.

MR. CALDWELL in the Chair,

And after some time spent therein, the Speaker resumed the chair, and Mr. Caldwell reported that the Committee had, according to order, had under consideration the Governor's address, and had come to the following resolutions thereupon, which he delivered in at the Clerk's table, where they were twice read, and agreed to by the House.

I. *Resolved*, That the several states composing the United States of America, are not united on the principle of unlimited submission to the General Government, but that by compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving each state to itself, the residuary mass of right to their own self government; and that whensoever the General Government assumes undelegated powers, its acts are unauthorized, void, and of no force; that to this compact each state acceded as a state, and as an integral party, its co-states forming as to itself the other party; that the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself:—since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all

other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions, as of the mode and measure of redress.

2. *Resolved*, That the Constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and offences against the laws of nations, and no other crimes whatever, and it being true as a general principle, and one of the amendments to the Constitution having also declared, "That the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people;" therefore, also the same act of Congress, passed on the 14th day of July, 1798, and entitled "An Act in addition to the act entitled an act for the punishment of certain crimes against the United States;" as also the act passed by them on the 27th day of June, 1798, entitled "An act, to punish frauds committed on the Bank of the United States" (and all other of their acts which assume to create, define, or punish crimes other than those enumerated in the Constitution), are altogether void, and of no force, and that the power to create, define, and punish such other crimes, is reserved, and of right appertains solely and exclusively to, the respective states, each within its own territory.

3. *Resolved*, That it is true as a general principle, as is also expressly declared by one of the amendments to the Constitution, that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people;" and that no power over the freedom of religion, freedom of speech, or freedom of the press, being delegated to the United States by the Constitution, nor prohibited by it to the states, all lawful powers respecting the same, did of right remain, and were reserved to the states, or to the people; that thus was manifested their determination to retain to themselves, the right of judging how far the licentiousness of speech and of the press, may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use, should be tolerated rather than the use be destroyed; and thus, also, they guarded against all abridgement by the United States of the freedom of religious opinions and exercises, and retained to themselves the right of protecting the same, as this state by a law passed on the general demand of its citizens, had already protected them from all human restraints or interference: And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution, which expressly declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press," thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch, that whatever violates either, throws down the sanctuary which covers the others, and that libels, falsehoods, and defamation, equally with heresy and false religion, are withheld from the cognizance of Federal tribunals: That therefore the act of the Congress of the United States, passed on the 14th day of July, 1798, entitled, "An act in addition to the act, for the punishment of certain crimes against the United States," which does abridge

the freedom of the press, is not law, but it is altogether void, and of no effect.

4. *Resolved*, That alien friends are under the jurisdiction and protection of the laws of the state wherein they are; that no power over them has been delegated to the United States, nor prohibited to the individual states distinct from their power over citizens; and it being true as a general principle, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states respectively or to the people," the act of the Congress of the United States, passed on the 22d day of June, 1798, entitled "an act concerning aliens," which assumes power over alien friends not delegated by the Constitution, is not law, but is altogether void and of no force.

5. *Resolved*, That in addition to the general principle as well as the express declaration, that powers not delegated are reserved, another and more special provision inserted in the Constitution from abundant caution has declared, "that the *migration* or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808." That this Commonwealth does admit the migration of alien friends described as the subject of the said act concerning aliens, that a provision against prohibiting their migration, is a provision against all acts equivalent thereto, or it would be nugatory; that to remove them when migrated, is equivalent to a prohibition of their migration, and is therefore contrary to the said provision of the Constitution and void.

6. *Resolved*, That the imprisonment of a person under the protection of the laws of this Commonwealth on his failure to obey the simple order of the President, to depart out of the United States, as is undertaken by the said act, entitled "an act concerning aliens," is contrary to the Constitution; one amendment to which has provided that "no person shall be deprived of liberty, without due process of law," and that another having provided, "that in all criminal prosecutions, the accused shall enjoy the right to a public trial by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence," the same act undertaking to authorize the President to remove a person out of the United States who is under the protection of the law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favor, without defence, without counsel, is contrary to these provisions also of the Constitution, is therefore not law, but utterly void and of no force.

That transferring the power of judging any person who is under the protection of the laws, from the courts to the President of the United States, as is undertaken by the same act concerning aliens, is against the article of the Constitution which provides that "the judicial power of the United States shall be vested in courts, the judges of which shall hold their offices during good behavior," and that the said act is void for that reason also; and it is further to be noted that this transfer of judiciary power is to that magistrate of the General Government who

already possesses all the executive, and a qualified negative in all the legislative powers.

7. *Resolved*, That the construction applied by the General Government (as is evinced by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress a power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare of the United States, and to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States, or any department thereof, goes to the destruction of all the limits prescribed to their power by the Constitution—That words meant by that instrument to be subsidiary only to the execution of the limited powers, ought not to be so construed as themselves to give unlimited powers, nor a part so to be taken as to destroy the whole residue of the instrument; that the proceedings of the General Government under color of these articles will be a fit and necessary subject for revisal and correction at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress.

8. *Resolved*, That the preceding resolutions be transmitted to the Senators and Representatives in Congress from this Commonwealth, who are hereby enjoined to present the same to their respective Houses, and to use their best endeavors to procure, at the next session of Congress, a repeal of the aforesaid unconstitutional and obnoxious acts.

9. *Resolved, lastly*, That the Governor of this Commonwealth be, and he is hereby, authorised and requested to communicate the preceding resolutions to the Legislatures of the several states, to assure them that this Commonwealth considers Union for specified national purposes, and particularly for those specified in their late Federal Compact, to be friendly to the peace, happiness, and prosperity of all the states: that, faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation; that it does also believe that to take from the states all the powers of self-government, and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these states: and that, therefore, this Commonwealth is determined, as it doubts not its co-states are tamely to submit to undelegated and consequently unlimited powers in no man or body of men on earth: that if the acts before specified should stand, these conclusions would flow from them; that the General Government may place any act they think proper on the list of crimes, and punish it themselves, whether enumerated or not enumerated by the Constitution, as recognizable by them; that they may transfer its cognizance to the President, or any other person, who may himself be the accuser, counsel, judge, and jury; whose suspicions may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction: That a very numerous and valuable description of the inhabitants of these states, being by this precedent reduced as outlaws to the absolute dominion of one man, and the barrier of the Constitution thus swept away from us all, no rampart now remains against the passions and the power of a majority of Congress, to protect from a like exportation or other more grievous punish-

ment the minority of the same body, the legislatures, judges, governors, and counsellors of the states, nor their other peaceful inhabitants who may venture to reclaim the constitutional rights and liberties of the states and people, or who, for other causes, good or bad, may be obnoxious to the views, or marked by the suspicions of the President, or be thought dangerous to his or their elections, or other interests, public or personal : That the friendless alien has indeed been selected as the safest subject of a first experiment ; but the citizen will soon follow, or rather has already followed ; for, already has a Sedition Act marked him as its prey : that these and successive acts of the same character, unless arrested on the threshold, may tend to drive these states into revolution and blood, and will furnish new calumnies against Republican Governments, and new prettexts for those who wish it to be believed that man cannot be governed but by a rod of iron ; that it would be a dangerous delusion, were a confidence in the men of our choice to silence our fears for the safety of our rights ; that confidence is every where the parent of despotism : that free government is founded in jealousy and not in confidence : it is jealousy, not confidence, which prescribes limited Constitutions to bind down those whom we are obliged to trust with power ; that our Constitution has accordingly fixed the limits to which, and no further, our confidence may go ; and let the honest advocate of confidence read the Alien and Sedition Acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits ? Let him say what the government is, if it be not a tyranny, which the men of our choice have conferred on the President, and the President of our choice has assented to, and accepted over the friendly strangers, to whom the mild spirit of our country and its law had pledged hospitality and protection : that the men of our choice have more respected the bare suspicions of the President, than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice. In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief, by the chains of the Constitution. That this Commonwealth does, therefore, call on its co-states for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes hereinbefore specified, plainly declaring whether these acts are or are not authorized by the Federal Compact ? And it doubts not that their sense will be so announced, as to prove their attachment unaltered to limited government, whether general or particular, and that the rights and liberties of their co-states, will be exposed to no dangers by remaining embarked on a common bottom with their own : That they will concur with this Commonwealth in considering the said acts as so palpably against the Constitution, as to amount to an undisguised declaration, that the compact is not meant to be the measure of the powers of the General Government, but that it will proceed in the exercise over these states of all powers whatsoever : That they will view this as seizing the rights of the states, and *consolidating them in the hands of the General Government*, with a power assumed to bind the states, not merely in cases made Federal, but in all cases whatsoever, by laws made, not with their consent, but by others against their consent : That this would be to surrender the form of government we have chosen, and to live under one deriving its powers from its own will, and

KENTUCKY RESOLUTIONS.

not from our authority : and that the co-states *recurring to their natural right* in cases not made *Federal*, will *concur in declaring these acts void and of no force*, and will each unite with this Commonwealth in requesting their repeal at the next session of Congress.

EDMUND BULLOCK, *S. H. R.*

JOHN CAMPBELL, *S. S. P. T.*

Passed the House of Representatives, November 10th, 1798.

Attest,

THOMAS TODD, *C. H. R.*

In SENATE, November 13th, 1798, unanimously concurred in.

Attest,

B. THURSTON, *Clerk of Senate.*

Approved, November 16th, 1798.

JAMES GARRARD, *G. K.*

By the Governor :

HARRY TOULMIN, *Secretary of State.*

KENTUCKY LEGISLATURE.

IN THE HOUSE OF REPRESENTATIVES.

Thursday, Nov. 14th, 1799.

The House, according to the standing order of the day, resolved itself into a Committee of the whole House, on the STATE OF THE COMMONWEALTH, MR. DESHA in the chair; and after some time spent therein, the Speaker resumed the chair, and Mr. Desha reported, that the Committee had taken under consideration sundry resolutions passed by several State Legislatures, on the subject of the ALIEN and SEDITION LAWS, and had come to a resolution thereupon, which he delivered in at the clerk's table, where it was read, and UNANIMOUSLY agreed to by the House, as follows :—

The Representatives of the good people of this Commonwealth, in general Assembly convened, having maturely considered the answers of sundry states in the Union, to their resolutions passed at the last session, respecting certain unconstitutional laws of Congress, commonly called the Aliens and Sedition Laws, would be faithless indeed to themselves, and to those they represent, were they silently to acquiesce in the principles and doctrines attempted to be maintained in all those answers, that of Virginia only excepted. To again enter the field of argument, and attempt more fully or forcibly to expose the unconstitutionality of those obnoxious laws, would, it is apprehended, be as unnecessary as unavailing. We cannot, however, but lament that in the discussion of those interesting subjects, by sundry of the Legislatures of our sister states, unfounded suggestions, and uncandid insinuations, derogatory of the true character and principles of the good people of this Commonwealth, have been substituted in place of fair reasoning and sound argument. Our opinions of these alarming measures of the General Government, together with our reasons for those opinions, were detailed with decency and with temper, and submitted to the discussion and judgment of our fellow citizens throughout the Union. Whether the like decency and temper have been observed in the answers of most of those states who have denied or attempted to obviate

the great truths contained in those resolutions, we have now only to submit to a candid world. Faithful to the true principles of the Federal Union, unconscious of any designs to disturb the harmony of that Union, and anxious only to escape the fangs of despotism, the good people of this Commonwealth are regardless of censure or calumnation. Lest, however, the silence of this Commonwealth should be construed into an acquiescence in the doctrines and principles advanced and attempted to be maintained by the said answers, or lest those of our fellow citizens throughout the Union, who so widely differ from us on those important subjects, should be deluded by the expectation that we shall be deterred from what we conceive our duty, or shrink from the principles contained in those resolutions; therefore,

Resolved, That this Commonwealth considers the Federal Union, upon the terms and for the purposes specified in the late compact, as conducive to the liberty and happiness of the several states; that it does now unequivocally declare its attachment to the Union, and to that compact, agreeable to its obvious and real intention, and will be among the last to seek its dissolution: That if those who administer the General Government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, an annihilation of the State Governments, and the erection upon their ruins of a general consolidated government, will be the inevitable consequence: That the principle and construction contended for by sundry of the State Legislatures, that the General Government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism, since the *discretion* of those who administer the government, and not the *Constitution*, would be the measure of their powers. That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction, and that a nullification by those sovereignties, of all unauthorized acts done under color of that instrument, is the *rightful remedy*: That this Commonwealth does, upon the most deliberate reconsideration, declare that the said Alien and Sedition Laws are, in their opinion, palpable violations of the said Constitution; and, however cheerfully it may be disposed to surrender its opinion to a majority of its sister states in matters of ordinary or doubtful policy, yet, in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: That although this Commonwealth, as a party to the Federal Compact, will bow to the laws of the Union, yet it does at the same time declare that it will not now, nor ever hereafter, cease to oppose in a constitutional manner, every attempt, from what quarter soever offered, to violate that compact. And, finally, in order that no pretexes or arguments may be drawn from a supposed acquiescence on the part of this Commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of the Federal Compact, this Commonwealth does now enter against them its SOLEMN PROTEST.

Extract, &c.

Attest :

THOMAS TODD, C. H. R.

IN SENATE, November 22, 1799.

Read and concurred in.

Attest :

B. THURSTON, C. S.

EXTRACT OF A LETTER

FROM

THOMAS JEFFERSON,

TO GOVERNOR GILES, OF VIRGINIA.

"26th December, 1825.

"DEAR SIR—I see as you do, and with the deepest affliction, the rapid strides with which the Federal branch of our government is advancing towards the usurpation of all the rights reserved to the states, and the consolidation in itself of all powers, foreign and domestic; and that, too, by constructions which, if legitimate, leave no limits to their power. Take together the decisions of the Federal Court, the doctrines of the President, and the misconstructions of the constitutional compact acted on by the legislature of the Federal branch, and it is but too evident that the three ruling branches of that department are in combination to strip their colleagues, the state authorities, of the powers reserved by them, and to exercise themselves all functions, foreign and domestic. Under the power to regulate commerce, they assume indefinitely that also over agriculture and manufactures, and call it regulation, too, to take the earnings of one of those branches of industry, and that too the most depressed, and put them into the pockets of the other, the most flourishing of all. Under the authority to establish post roads they claim that of cutting down mountains for the construction of roads, of digging canals, and aided by a little sophistry on the words 'general welfare,' a right to do, not only the acts to effect that which are specifically enumerated and permitted, but whatsoever they shall think, or pretend, will be for the general welfare. And what is our resource for the preservation of the Constitution? Reason and argument! You might as well reason and argue with the marble columns encircling them. The representatives chosen by ourselves? They are joined in the combination, some from incorrect views of government, some from corrupt ones, sufficient voting together to out number the sound parts, and with majorities of only 1, 2, or 3, bold enough to go forward in defiance. *Are we, then, to stand to our arms?*

"No! that must be the last resource, not to be thought of until much longer and greater sufferings. If every infraction of a compact of so many parties is to be resisted at once as a dissolution of it, none can ever be formed which would last one year. We must have patience and long endurance, then, with our brethren, while under delusion. Give them time for reflection and experience of consequences; keep ourselves in a situation to profit by the chapter of accidents—and separate from our companions only when the sole alternatives left are the dissolution of our union with them, or submission to a government without limitation of powers."

LETTER
FROM
MR. MADISON,
TO HON. EDWARD EVERETT, OF MASSACHUSETTS.

PUBLISHED IN THE NORTH AMERICAN REVIEW, OCT. 1830.

"Montpelier, August, 1830.

"Dear Sir,

"I have duly received your letter, in which you refer to the 'nullifying doctrine,' advocated as a constitutional right, by some of our distinguished fellow citizens; and to the proceedings of the Virginia Legislature in '98 and '99, as appealed to in behalf of that doctrine; and you express a wish for my ideas on those subjects.

"I am aware of the delicacy of the task in some respects, and the difficulty in every respect, of doing full justice to it. But, having, in more than one instance, complied with a like request from other friendly quarters, I do not decline a sketch of the views which I have been led to take of the doctrine in question, as well as some others connected with them; and of the grounds from which it appears that the proceedings of Virginia have been misconceived by those who have appealed to them. In order to understand the true character of the Constitution of the United States, the error, not uncommon, must be avoided, of viewing it through the medium, either of a consolidated government, or of a confederated government, whilst it is neither the one nor the other; but a mixture of both. And having, in no model, the similitudes and analogies applicable to other systems of government, it must, more than any other, be its own interpreter, according to its text and the facts of the case.

"From these it will be seen that the characteristic peculiarities of the Constitution are, 1, the mode of its formation; 2, the division of the supreme powers of government between the states in their united capacity, and the states in their individual capacities.

"1. It was formed, not by the governments of the component states, as the Federal Government for which it was substituted was formed. Nor was it formed by a majority of the people of the United States, as a single community, in the manner of a consolidated government.

"It was formed by the states, that is, by the people in each of the states, acting in their highest sovereign capacity; and formed consequently by the same authority which formed the State Constitutions.

"Being thus derived from the same source as the constitutions of the states, it has, within each state, the same authority as the constitution of the state: and is as much a constitution in the strict sense of the term, within its prescribed sphere, as the constitutions of the states are, within their respective spheres; but with this obvious and essential difference, that being a compact among the states in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it cannot be altered or annulled at the will of the

states individually, as the constitution of a state may be at its individual will.

"2. And that it divides the supreme powers of government, between the government of the United States, and the governments of the individual states, is stamped on the face of the instrument; the powers of war and of taxation, of commerce and of treaties, and other enumerated powers vested in the government of the United States, being of as high and sovereign a character as any of the powers reserved to the state governments.

"Nor is the government of the United States, created by the constitution, less a government in the strict sense of the term, within the sphere of its powers, than the governments created by the constitutions of the states are, within their several spheres. It is like them organized into Legislative, Executive, and Judiciary Departments. It operates, like them, directly on persons and things. And, like them, it has at command a physical force for executing the powers committed to it. The concurrent operation in certain cases, is one of the features marking the peculiarity of the system.

"Between these different constitutional governments, the one operating in all the states, the others operating separately in each, with the aggregate powers of government divided between them, it could not escape attention, that controversies would arise concerning the boundaries of jurisdiction; and that some provision ought to be made for such occurrences. A political system that does not provide for a peaceable and authoritative termination of occurring controversies, would not be more than the shadow of a government; the object and end of a real government being the substitution of law and order, for uncertainty, confusion, and violence.

"That to have left a final decision, in such cases, to each of the states, then thirteen, and already twenty-four, could not fail to make the constitution and laws of the United States different in different states, was obvious; and not less obvious, that this diversity of independent decisions, must altogether distract the government of the Union, and speedily put an end to the union itself. A uniform authority of the laws is in itself a vital principle. Some of the most important laws could not be partially executed. They must be executed in all the states, or they could be duly executed in none. An impost, or an excise, for example, if not in force in some states, would be defeated in others. It is well known that this was among the lessons of experience which had a primary influence in bringing about the existing constitution. A loss of its general authority would moreover revive the exasperating questions between the states holding ports for foreign commerce, and the adjoining states without them; to which are now added all the inland states, necessarily carrying on their foreign commerce through other states.

"To have made the decisions under the authority of the individual states, coordinate, in all cases, with decisions under the authority of the United States, would unavoidably produce collisions incompatible with the peace of society, and with that regular and efficient administration, which is of the essence of free governments. Scenes could not be avoided, in which a ministerial officer of the United States, and the correspondent officer of an individual state, would have encounters in executing conflicting decrees; the result of which would depend on

the comparative force of the local posesses attending them; and that, a casualty depending on the political opinions and party feelings in different states.

"To have referred every clashing decision, under the two authorities for a final decision, to the states as parties to the constitution, would be attended with delays, with inconveniences, and with expenses, amounting to a prohibition of the expedient; not to mention its tendency to impair the salutary veneration for a system requiring such frequent interpositions, nor the delicate questions which might present themselves as to the form of stating the appeal, and as to the quorum for deciding it.

"To have trusted to negotiation for adjusting disputes between the government of the United States and the state governments, as between independent and separate sovereignties, would have lost sight altogether of a constitution and government for the Union, and opened a direct road from a failure of that resort, to the *ultima ratio* between nations wholly independent of and alien to each other. If the idea had its origin in the process of adjustment, between separate branches of the same government, the analogy entirely fails. In the case of disputes between independent parts of the same government, neither part being able to consummate its will, nor the government to proceed without a concurrence of the parts necessity brings about an accommodation. In disputes between a state government, and the government of the United States, the case is practically as well as theoretically different; each party possessing all the departments of an organized government, Legislative, Executive, and Judiciary; and having each a physical force to support its pretensions. Although the issue of negotiation might sometimes avoid this extremity, how often would it happen, among so many states, that an unaccommodating spirit in some, would render that resource unavailing? A contrary supposition would not accord with a knowledge of human nature, or the evidence of our own political history.

"The constitution, not relying on any of the preceding modifications, for its safe and successful operation, has expressly declared, on the one hand, 1, 'that the constitution, and the laws made in pursuance thereof, and all treaties made under the authority of the United States, shall be the supreme law of the land; 2, that the Judges of every state shall be bound thereby, any thing in the constitution and laws of any state to the contrary notwithstanding; 3, that the judicial power of the United States shall extend to all cases in law and equity arising under the constitution, the laws of the United States, and treaties made under their authority, &c.'

"On the other hand, as a security of the rights and powers of the states, in their individual capacities, against an undue preponderance of the powers granted to the government over them in their united capacity, the constitution has relied on, 1, the responsibility of the Senators and Representatives in the Legislature of the United States to the Legislatures and people of the states; 2, the responsibility of the President to the people of the United States; and 3, the liability of the Executive and Judicial functionaries of the United States to impeachment by the Representatives of the people of the states, in one branch of the Legislature of the United States, and trial by the Representatives of the states, in the other branch: the state functionaries, Legislative, Executive, and Judicial, being, at the same time, in their appointment

and responsibility, altogether independent of the agency or authority of the United States.

"How far this structure of the Government of the United States is adequate and safe for its objects, time alone can absolutely determine. Experience seems to have shown that whatever may grow out of future stages of our national career, there is, as yet, a sufficient control, in the popular will, over the Executive and Legislative Departments of the government. When the Alien and Sedition Laws were passed in contravention to the opinions and feelings of the community, the first elections that ensued put an end to them. And whatever may have been the character of other acts, in the judgment of many of us, it is but true, that they have generally accorded with the views of a majority of the states and of the people. At the present day it seems well understood that the laws which have created the most dissatisfaction, have had a like sanction without doors; and that whether continued, varied, or repealed, a like proof will be given of the sympathy and responsibility of the representative body, to the constituent body. Indeed, the great complaint now is against the results of this sympathy and responsibility in the legislative policy of the nation.

"With respect to the judicial power of the United States, and the authority of the Supreme Court in relation to the boundary of jurisdiction between the Federal and State Governments, I may be permitted to refer to the thirty-ninth number of the 'Federalist,'* for the light in which the subject was regarded by its writer, at the period when the Constitution was depending; and it is believed that the same was the prevailing view then taken of it, that the same view has continued to prevail, and that it does so at this time, notwithstanding the eminent exceptions to it.

"But it is perfectly consistent with the concession of this power to the Supreme Court, in cases falling within the course of its functions, to maintain that the power has not always been rightly exercised. To say nothing of the period, happily a short one, when judges in their seats did not abstain from intemperate and party harangues, equally at variance with their duty and their dignity; there have been occasional decisions from the bench, which have incurred serious and extensive disapprobation. Still it would seem that, with but few exceptions, the course of the Judiciary has been hitherto sustained by the predominant sense of the nation.

"Those who have denied or doubted the supremacy of the judicial power of the United States, and denounce at the same time a nullifying power in a state, seems not to have sufficiently adverted to the utter inefficiency of a supremacy in a law of the land, without a supremacy in the exposition and execution of the law; nor to the destruction of all equipoise between the Federal Government and the State Governments, if, whilst the functionaries of the Federal Government are directly or indirectly elected by and responsible to the states, and the functionaries of the states are in their appointment and responsibility

* No. 39. 'It is true, that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the General Government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword, and a dissolution of the compact; and that it ought to be established under the general, rather than under the local, governments; or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.'

wholly independent of the United States, no constitutional control of any sort belonged to the United States over the states. Under such an organization it is evident that it would be in the power of the states, individually, to pass unauthorized laws, and to carry them into complete effect, any thing in the Constitution and laws of the United States to the contrary notwithstanding. This would be a nullifying power in its plenary character; and whether it had its final effect, through the Legislative, Executive, or Judiciary organ of the state, would be equally fatal to the constituted relation between the two governments.

"Should the provisions of the Constitution, as here reviewed, be found not to secure the government and rights of the states against usurpations and abuses on the part of the United States, the final resort within the purview of the Constitution, lies in an amendment of the Constitution, according to a process applicable by the states.

"And in the event of a failure of every constitutional resort, and an accumulation of usurpations and abuses, rendering passive obedience and non-resistance a greater evil than resistance and revolution, there can remain but one resort, the last of all—an appeal from the cancelled obligations of the constitutional compact, to original rights and the law of self-preservation. This is the *ultima ratio* under all governments, whether consolidated, confederated, or a compound of both; and it cannot be doubted, that a single member of the Union, in the extremity supposed, but in that only, would have a right, as an extra and ultra-constitutional right, to make the appeal.

"This brings us to the expedient lately advanced, which claims for a single state a right to appeal against an exercise of power by the government of the United States decided by the states to be unconstitutional, to the parties to the constitutional compact; the decision of the state to have the effect of nullifying the act of the government of the United States, unless the decision of the state be reversed by three fourths of the parties.

"The distinguished names and high authorities which appear to have asserted and given a practical scope to this doctrine, entitle it to a respect which it might be difficult otherwise to feel for it.

"If the doctrine were to be understood as requiring the three fourths of the states to sustain, instead of that proportion to reverse the decision of the appealing state, the decision to be without effect during the appeal, it would be sufficient to remark, that this extra-constitutional course might well give way to that marked out by the Constitution, which authorizes two thirds of the states to institute, and three fourths to effectuate, an amendment of the Constitution, establishing a permanent rule of the highest authority, in place of an irregular precedent of construction only.

"But it is understood that the nullifying doctrine imports that the decision of the state is to be presumed valid, and that it overrules the law of the United States, unless overruled by three fourths of the states.

"Can more be necessary to demonstrate the inadmissibility of such a doctrine, than that it puts it in the power of the smallest fraction over one fourth of the United States, that is, of seven states out of twenty-four, to give the law and even the Constitution to seventeen states, each of the seventeen having, as parties to the Constitution, an equal right with each of the seven, to expound it, and to insist on the exposition? That the seven might, in particular instances, be right, and the seventeen wrong, is more than possible. But to establish a positive and permanent rule giving such a power, to such a minority, over such a majority, would over-

turn the first principle of free government, and in practice necessarily overturn the government itself.

"It is to be recollected that the Constitution was proposed to the people of the states as a *whole*, and unanimously adopted by the states as a *whole*, it being a part of the Constitution that not less than three fourths of the states should be competent to make any alterations in what had been unanimously agreed to. So great is the caution on this point, that in two cases where peculiar interests were at stake, a proportion even of three fourths is distrusted, and unanimity required to make an alteration.

"When the Constitution was adopted as a whole, it is certain that there were many parts, which, if separately proposed, would have been promptly rejected. It is far from impossible that every part of a Constitution might be rejected by a majority, and yet taken together as a whole be unanimously accepted. Free Constitutions will rarely, if ever be formed, without reciprocal concessions; without articles conditioned on and balancing each other. Is there a Constitution of a single state out of the twenty-four that would bear the experiment of having its component parts submitted to the people and separately decided on?

"What the fate of the Constitution of the United States would be, if a small proportion of the states could expunge parts of it particularly valued by a large majority, it can have but one answer.

"The difficulty is not removed by limiting the doctrine to cases of construction. How many cases of that sort, involving cardinal provisions of the Constitution, have occurred? How many now exist? How many may hereafter spring up? How many might be ingeniously created, if entitled to the privilege of a decision in the mode proposed?

"It is certain that the principle of that mode would not reach further than is contemplated. If a single state can of right require three fourths of its co-states to overrule its exposition of the Constitution, because that proportion is authorized to amend it, would the plea be less plausible that, as the Constitution was unanimously established, it ought to be unanimously expounded?

"The reply to all such suggestions seems to be unavoidable and irresistible; that the Constitution is a compact, that its text is to be expounded according to the provisions for expounding it—making a part of the compact; and that none of the parties can rightfully renounce the expounding provision more than any other part. When such a right accrues, as may accrue, it must grow out of abuses of the compact releasing the sufferers from their fealty to it.

"In favor of the nullifying claim for the states, individually, it appears, as you observe, that the proceedings of the Legislature of Virginia, in '98 and '99, against the Alien and Sedition Acts, are much dwelt upon.

"It may often happen, as experience proves, that erroneous constructions, not anticipated, may not be sufficiently guarded against, in the language used; and it is due to the distinguished individuals, who have misconceived the intention of those proceedings, to suppose that the meaning of the Legislature, though well comprehended at the time, may not now be obvious to those unacquainted with the contemporary indications and impressions.

"But it is believed that by keeping in view the distinction between the governments of the states, and the states in which they were parties to the Constitution; between the rights of the parties, in their concurrent and in their individual capacities; between the several modes and objects of interposition against the abuses of power, and especially between interpositions within the purview of the Constitution, and interpositions appealing from the Constitution to the rights of nature paramount to all Constitutions; with an attention, always of explanatory use, to the views and arguments which were combated, the Resolutions of Virginia, as vindicated in the Report on them, will be found entitled to an exposition, showing a consistency in their parts, and an inconsistency of the whole with the doctrine under consideration.

"That the Legislature could not have intended to sanction such a doctrine, is to be inferred from the debates in the Houses of Delegates, and from the address of the two Houses to their constituents, on the subject of the resolutions. The tenor of the debates, which were ably conducted, and are understood to have been revised for the press by most, if not all, of the speakers, discloses no reference whatever to a constitutional right in an individual state, to arrest by force the operation of a law of the United States. Concert among the states for redress against the Alien and Sedition Laws, as acts of usurped power was a leading sentiment; and the attainment of a concert the immediate object of the course adopted by the legislature, which was that of inviting the other states 'to concur in declaring the acts to be unconstitutional, and to co-operate by the necessary and proper measures in maintaining unimpaired the authorities, rights and liberties reserved to the states respectively, and to the people.'* That by the necessary and proper measures to be *concurrently* and *co-operatively* taken, were meant measures known to the Constitution, particularly the ordinary control of the people and legislatures of the states, over the Government of the United States, cannot be doubted; and the interposition of this control, as the event showed, was equal to the occasion.

"It is worthy of remark, and explanatory of the intentions of the Legislature, that the words 'not law, but utterly null, void, and of no force or effect,' which had followed, in one of the resolutions, the word 'unconstitutional,' were struck out by common consent. Though the words were in fact but synonymous with 'unconstitutional;' yet to guard against a misunderstanding of this phrase as more than declaratory of opinion, the word 'unconstitutional' alone was retained, as not liable to that danger.

"The published Address of the Legislature to the people, their constituents, affords another conclusive evidence of its views. The address warns them against the encroaching spirit of the General Government, argues the unconstitutionality of the Alien and Sedition Acts, points to other instances in which the constitutional limits had been overleaped; dwells upon the dangerous mode of deriving power by implication; and in general presses the necessity of watching over the consolidating tendency of the Federal policy. But nothing is said that can be understood to look to means of maintaining the rights of the states, beyond the regular ones, within the forms of the Constitution.

"If any further lights on the subject could be needed, a very strong one

* See the concluding resolution of 1798.

is reflected in the answers to the resolutions, by the states which protested against them. The main objection of these, beyond a few general complaints of the inflammatory tendency of the resolutions, was directed against the assumed authority of a State Legislature to declare a law of the United States unconstitutional, which they pronounced an unwarrantable interference with the exclusive jurisdiction of the Supreme Court of the United States. Had the resolutions been regarded as avowing and maintaining a right, in an individual state, to arrest, by force, the execution of a law of the United States, it must be presumed that it would have been a conspicuous object of their denunciation.

"With cordial salutations,

JAMES MADISON."

ON THE RIGHT OF SECESSION.

[*Extract from the Richmond Enquirer, Nov. 1, 1814.*]

EDITORIAL REMARKS. "No man, no association of men, no State, or set of States, *has a right* to withdraw itself from this Union of its own accord. The same power which knit us together can unknit. The same formality which formed the links of the Union is necessary to dissolve it. The *majority of States* which formed the Union must consent to the withdrawal of *any one* branch of it. Until that consent has been obtained, any attempt to dissolve the *Union*, or obstruct the efficacy of the constitutional laws, is treason—treason to all intents and purposes."

HARTFORD CONVENTION.

A Convention of Delegates from the New England States, appointed to meet in Convention at Hartford, Connecticut, assembled for that purpose in the Council Chamber of the State House, in that city, on Thursday, December 15, 1814, at 10 o'clock, A. M. On being called to order they proceeded to organize themselves, by unanimously choosing the Hon. George Cabot, a member from Massachusetts, their President, and Theodore Dwight, of Hartford, Secretary.

The following are the names of the members :

Elected by the Legislatures.

From Massachusetts 12.

George Cabot,
William Prescott,
Harrison Gray Otis,
Timothy Bigelow,
Stephen Longfellow,
Daniel Waldo,
George Bliss,
Nathan Dane,
Hodijah Baylies,
Samuel Sumner Wilde,
Joseph Lyman,
Joshua Thomas.

From Connecticut 7.

Chauncey Goodrich,
James Hillhouse,
John Treadwell,
Zephaniah Swift,
Nathaniel Smith,
Calvin Goddard,
Roger Minott Sherman.

From Rhode Island 4.

Daniel Lyman,
Samuel Ward,
Benjamin Hazard,
Edward Manton.

Elected by County Conventions from Cheshire and Grafton.

New Hampshire 2.

Benjamin West,
Mills Olcott.

REPORT, &c.

The Delegates from the Legislatures of the States of Massachusetts, Connecticut, and Rhode Island, and from the Counties of Grafton and Cheshire, in the State of New Hampshire, and the County of Windham, in the State of Vermont, assembled in Convention, beg leave to report the following result of their conference.

THE Convention is deeply impressed with a sense of the arduous nature of the commission which they were appointed to execute, of devising the means of defence against dangers, and of relief from oppressions proceeding from the act of their own government, without violating constitutional principles, or disappointing the hopes of a suffering and injured people. To prescribe patience and firmness to those who are already exhausted by distress, is sometimes to drive them to despair, and the progress towards reform by the regular road, is irksome to those whose imaginations discern, and whose feelings prompt to a shorter course. But when abuses, reduced to system and accumulated through a course of years, have pervaded every department of government, and spread corruption through every region of the state; when these are closed with the forms of law, and enforced by an executive whose will is their source, no summary means of relief can be applied without recourse to direct and open resistance. This experiment, even when justifiable, cannot fail to be painful to the good citizen; and the success of the effort will be no security against the danger of the example. Precedents of resistance to the worst administration, are eagerly seized by those who are naturally hostile to the best. Necessity alone can sanction a resort to this measure; and it should never be extended in duration or degree beyond the exigency, until the people, not merely in the fervor of sudden excitement, but after full deliberation, are determined to change the Constitution.

It is a truth not to be concealed, that a sentiment prevails to no inconsiderable extent, that administration have given such constructions to that instrument, and practised so many abuses under color of its authority, that the time for a change is at hand. Those who so believe, regard the evils which surround them as intrinsic and incurable defects in the Constitution. They yield to a persuasion, that no change, at any time, or on any occasion, can aggravate the misery of their country. This opinion may ultimately prove to be correct. But as the evidence on which it rests is not yet conclusive, and as measures adopted upon the assumption of its certainty might be irrevocable, some general considerations are submitted, in the hope of reconciling all to a course of moderation and firmness, which may save them from the regret incident to sudden decisions, probable avert the evil, or at least insure consolation and success in the last resort.

The Constitution of the United States, under the auspices of a wise and virtuous administration, proved itself competent to all the objects of national prosperity, comprehended in the views of its framers. No parallel can be found in history, of a transition so rapid as that of the United States from the lowest depression to the highest felicity—from the condition of weak and disjointed republics, to that of a great, united, and prosperous nation.

Although this high state of public happiness has undergone a miserable and afflicting reverse, through the prevalence of a weak and profligate policy, yet the evils and afflictions which have thus been induced upon the country, are not peculiar to any form of government. The lust and caprice of power, the corruption of patronage, the oppression of the weaker interests of the community by the stronger, heavy taxes, wasteful expenditures, and unjust and ruinous wars, are the natural offspring of bad administrations in all ages and countries. It was indeed to be hoped that the rulers of these states would not make such disastrous haste to involve their infancy in the embarrassments of old and rotten institutions. Yet all this have they done; and their conduct calls loudly for their dismission and disgrace. But to attempt upon every abuse of power to change the Constitution, would be to perpetuate the evils of revolution.

Again, the experiment of the powers of the Constitution, to regain its vigor, and of the people to recover from their delusions, has been hitherto made under the greatest possible disadvantages arising from the state of the world. The fierce passions which have convulsed the nations of Europe, have passed the ocean, and finding their way to the bosoms of our citizens, have afforded to administration the means of perverting public opinion in respect to our foreign relations, so as to acquire its aid in the indulgence of their animosities, and the increase of their adherents. Further, a reformation of public opinion, resulting from dear bought experience in the southern Atlantic states, at least not to be despaired of. They will have felt that the eastern states cannot be made exclusively the victims of a capricious and impassioned policy. They will have seen that the great and essential interests of the people are common to the south and to the east. They will realise the fatal errors of a system which seeks revenge for commercial injuries in the sacrifice of commerce, and aggravates by needless wars, to an immeasurable extent, the injuries it professes to redress. They may discard the influence of visionary theorists, and recognise the benefits of a practical policy. Indications of this desirable revolution of opinion among our brethren in those states, are already manifested. While a hope remains of its ultimate completion, its progress should not be retarded or stopped by exciting fears which must check these favorable tendencies, and frustrate the efforts of the wisest and best men in those states, to accelerate this propitious change.

Finally, if the Union be destined to dissolution, by reason of the multiplied abuses of administrations, it should, if possible, be the work of peaceable times, and deliberate consent. Some new form of confederacy should be substituted among those states, which shall intend to maintain a federal relation to each other. Events may prove that the causes of our calamities are deep and permanent. They may be found to proceed, not merely from the blindness of prejudice, pride of opinion, violence of party spirit, or the confusion of the times; but they may be traced to implacable combinations of individuals, or of states, to monopolize power and office, and to trample without remorse upon the

rights and interests of commercial sections of the Union. Whenever it shall appear that these causes are radical and permanent, a separation by equitable arrangement will be preferable to an alliance by constraint, among nominal friends, but real enemies, inflamed by mutual hatred and jealousies, and inviting by intestine divisions, contempt, and aggression from abroad. But a severance of the Union by one or more states, against the will of the rest, and especially in a time of war, can be justified only by absolute necessity. These are among the principal objections against precipitate measures tending to disunite the states, and when examined in connexion with the farewell address of the Father of his country, they must, it is believed, be deemed conclusive.

Under these impressions, the Convention have proceeded to confer and deliberate upon the alarming state of public affairs, especially as affecting the interests of the people who have appointed them for this purpose, and they are naturally led to a consideration, in the first place, of the dangers and grievances which menace an immediate or speedy pressure, with a view of suggesting means of pressent relief; in the next place, of such as are of a more remote and general description, in the hope of attaining future security.

Among the subjects of complaint and apprehension, which might be comprised under the former of these propositions, the attention of the Convention has been occupied with the claims and pretensions advanced, and the authority exercised over the militia, by the executive and legislative departments of the National Government. Also, upon the destitution of the means of defence in which the Eastern States are left; while at the same time they are doomed to heavy requisitions of men and money for national objects.

The authority of the National Government over the militia is derived from those clauses in the Constitution which give power to Congress "to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions"—also, "to provide for organizing, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." Again, "The President shall be Commander in Chief of the army and navy of the United States, and of the militia of the several states, *when called into the actual service of the United States.*" In these specified cases only, has the National Government any power over the militia; and it follows, conclusively, that, for all general and ordinary purposes, this power belongs to the states respectively, and to them alone. It is not only with regret, but with astonishment, the Convention perceive that, under color of an authority conferred with such plain and precise limitations, a power is arrogated by the executive government, and in some instances sanctioned by the two Houses of Congress, of control over the militia, which if conceded will render nugatory the rightful authority of the individual states over that class of men, and, by placing at the disposal of the National Government the lives and services of the great body of the people, enable it at pleasure to destroy their liberties, and erect a military despotism on the ruins.

An elaborate examination of the principles assumed for the basis of these extravagant pretensions, of the consequences to which they lead,

and of the insurmountable objections to their admission, would transcend the limits of this Report. A few general observations, with an exhibition of the character of these pretensions, and a recommendation of a strenuous opposition to them, must not however be omitted.

It will not be contended that, by the terms used in the constitutional compact, the power of the National Government to call out the militia is other than a power expressly limited to three cases. One of these must exist as a condition precedent to the exercise of that power—unless the laws shall be opposed, or an insurrection shall exist, or an invasion shall be made, Congress, and of consequence the President as their organ, has no more power over the militia than over the armies of a foreign nation.

But if the declaration of the President should be admitted to be an unerring test of the existence of these cases, this important power would depend, not upon the truth of the fact, but upon executive infallibility; and the limitation of the power would consequently be nothing more than merely nominal, as it might always be eluded. It follows, therefore, that the decision of the President in this particular cannot be conclusive. It is as much the duty of the state authorities to watch over the rights reserved, as of the United States to exercise the powers which are *delegated*.

The arrangement of the United States into military districts, with a small portion of the regular force, under an officer of high rank of the standing army, with power to call for the militia, as circumstances in his judgment may require; and to assume the command of them, is not warranted by the Constitution or any law of the United States. It is not denied that Congress may delegate to the President of the United States the power to call forth the militia in the cases which are within their jurisdiction—but he has no authority to substitute military prefects throughout the Union, to use their own discretion in such instances. To station an officer of the army in a military district without troops corresponding to his rank, for the purpose of taking command of the militia that may be called into service, is a manifest evasion of that provision of the Constitution which expressly reserves to the states the appointment of the officers of the militia; and the object of detaching such officer cannot be well conceived to be any other than that of superseding the Governor or other officers of the militia in their right to command.

The power of dividing the militia of the states into classes, and obliging such classes to furnish, by contract or draft, able bodied men, to serve for one or more years for the defence of the frontier, is not delegated to Congress. If a claim to draft the militia for one year for such general object be admissible, no limitation can be assigned to it, but the discretion of those who make the law. Thus with a power in Congress to authorize such a draft or conscription, and in the Executive to decide conclusively upon the existence and continuance of the emergency, the whole militia may be converted into a standing army disposable at the will of the President of the United States.

The power of compelling the militia and other citizens of the United States, by a forcible draft or conscription to serve in the regular armies as proposed in a late official letter of the Secretary of War, is not delegated to Congress by the constitution, and the exercise of it would be no less dangerous to their liberties, than hostile to the sovereignty of the



states. The effort to deduce this power from the right of raising armies, is a flagrant attempt to pervert the sense of the clause in the constitution which confers that right, and is incompatible with other provisions in that instrument. The armies of the United States have always been raised by contract, never by conscription, and nothing more can be wanting to a government, possessing the power thus claimed, to enable it to usurp the entire control of the militia, in derogation of the authority of the state, and to convert it by impressment into a standing army.

It may be here remarked, as a circumstance illustrative of the determination of the Executive to establish an absolute control over all descriptions of citizens, that the right of impressing seamen into the naval service is expressly asserted by the Secretary of the Navy in a late report. Thus a practice which, in a foreign government, has been regarded with great abhorrence by the people, finds advocates among those who have been the loudest to condemn it.

The law authorizing the enlistment of minors and apprentices into the armies of the United States, without the consent of the parents and guardians, is also repugnant to the spirit of the Constitution. By a construction of the power to raise armies, as applied by our present rulers, not only persons capable of contracting are liable to be impressed into the army, but those who are under legal disabilities to make contracts, are to be invested with this capacity, in order to enable them to annul at pleasure contracts made in their behalf by legal guardians. Such an interference with the municipal laws and rights of the several states, could never have been contemplated by the framers of the Constitution. It impairs the salutary control and influence of the parent over his child—the master over his servant—the guardian over his ward—and thus destroys the most important relations in society, so that by the conscription of the father, and the seduction of the son, the power of the Executive over all the effective male population of the United States is made complete.

Such are some of the odious features of the novel system proposed by the rulers of a free country, under the limited powers derived from the Constitution. What portion of them will be embraced in acts finally to be passed, it is yet impossible to determine. It is, however, sufficiently alarming to perceive that these projects emanate from the highest authority; nor should it be forgotten that, by the plan of the Secretary of War, the classification of the militia embraced the principle of direct taxation upon the white population only; and that, in the House of Representatives, a motion to apportion the militia among the white population exclusively, which would have been in its operation a direct tax, was strenuously urged and supported.

In this whole series of devices and measures for raising men, this Convention discern a total disregard for the Constitution, and a disposition to violate its provisions, demanding from the individual states a firm and decided opposition. An iron despotism can impose no harder servitude upon the citizen, than to force him from his home and his occupation, to wage offensive wars, undertaken to gratify the pride or passions of his master. The example of France has recently shown that a cabal of individuals assuming to act in the name of the people, may transform the great body of citizens into soldiers, and deliver them over into the hands of a single tyrant. No war, not held in just abhorrence by a people, can require the aid of such stratagems to recruit an army. Had the troops

already raised, and in great numbers sacrificed upon the frontier of Canada, been employed for the defence of the country, and had the millions which have been squandered with shameless profusion, been appropriated to their payment, to the protection of the coast, and to the naval service, there would have been no occasion for unconstitutional expedients. Even at this late hour let government leave to New England the remnant of her resources, and she is ready and able to defend her territory, and to resign the glories and advantages of the border war, to those who are determined to persist in its prosecution.

That acts of Congress in violation of the Constitution are absolutely void, is an undeniable position. It does not, however, consist with the respect and forbearance due from a confederate state towards the general government, to fly to open resistance upon every infraction of the Constitution. The mode and the energy of the opposition should always conform to the nature of the violation, the intention of its authors, the extent of the injury inflicted, the determination manifested to persist in it, and the danger of delay. But in cases of deliberate, dangerous, and palpable infractions of the Constitution, affecting the sovereignty of a state, and liberties of the people, it is not only the right but the duty of such a state to interpose its authority for their protection, in the manner best calculated to secure that end. When emergencies occur which are either beyond the reach of the judicial tribunals, or too pressing to admit of the delay incident to their forms, states, which have no common umpire, must be their own judges, and execute their own decisions. It will thus be proper for the several states to await the ultimate disposal of the obnoxious measures, recommended by the Secretary of War, or pending before Congress, and so to use their power according to the character these measures shall finally assume, as effectually to protect their own sovereignty, and the rights and liberties of their citizens.

The next subject which has occupied the attention of the Convention, is the means of defence against the common enemy. This naturally leads to the inquiries, whether any expectation can be reasonably entertained, that adequate provision for the defence of the Eastern states will be made by the national government? Whether the several states can, from their own resources, provide for self-defence and fulfil the requisitions which are to be expected for the national treasury? and, generally, what course of conduct ought to be adopted by those states, in relation to the great object of defence?

Without pausing, at present, to comment upon the causes of the war, it may be assumed as a truth, officially announced, that to achieve the conquest of Canadian territory, and to hold it as a pledge for peace, is the deliberate purpose of administration. This enterprise, commenced at a period when government possessed the advantage of selecting the time and occasion for making a sudden descent upon an unprepared enemy, now languishes in the third year of the war. It has been prosecuted with various fortune, and occasional brilliancy of exploit, but without any solid acquisition. The British armies have been recruited by veteran regiments. Their navy commands Ontario. The American ranks are thinned by the casualties of war. Recruits are discouraged by the unpopular character of the contest, and by the uncertainty of receiving their pay.

In the prosecution of this favorite warfare, administration have left the exposed and vulnerable parts of the country destitute of all efficient means

of defence. The main body of the regular army has been marched to the frontier. The navy has been stripped of a great part of its sailors for the service of the Lakes. Meanwhile the enemy scours the seacoast, blockades our ports, ascends our bays and rivers, makes actual descents in various and distant places, holds some by force, and threatens all that are assailable with fire and sword. The seaboard of four of the New England states, following its curvatures, presents an extent of more than seven hundred miles, generally occupied by a compact population, and accessible by a naval force, exposing a mass of people and property to the devastation of the enemy, which bears a great proportion to the residue of the maritime frontier of the United States. This extensive shore has been exposed to frequent attacks, repeated contributions, and constant alarms. The regular forces detached by the national government for its defence, are mere pretexts for placing officers of high rank in command. They are besides confined to a few places, and are too insignificant in number to be included in any computation.

These states have thus been left to adopt measures for their own defence. The militia have been constantly kept on the alert, and harassed by garrison duties, and other hardships, while the expenses, of which the National Government decline the reimbursement, threaten to absorb all the resources of the states. The President of the United States has refused to consider the expense of the militia detached by state authority, for the indispensable defence of the state, as chargeable to the Union, on the ground of a refusal by the executive of the state, to place them under the command of officers of the regular army. Detachments of militia placed at the disposal of the General Government, have been dismissed either without pay, or with depreciated paper. The prospect of the ensuing campaign is not enlivened by the promise of any alleviation of these grievances. From authentic documents, extorted by necessity from those whose inclination might lead them to conceal the embarrassments of the government, it is apparent that the treasury is bankrupt, and its credit prostrate. So deplorable is the state of the finances, that those who feel for the honor and safety of the country, would be willing to conceal the melancholy spectacle, if those whose infatuation has produced this state of fiscal concerns, had not found themselves compelled to unveil it to public view.

If the war be continued, there appears no room for reliance upon the national government for the supply of those means of defence, which must become indispensable to secure these states from desolation and ruin. Nor is it possible that the states can discharge this sacred duty from their own resources, and continue to sustain the burden of the national taxes. The Administration, after a long perseverance in plans to baffle every effort of commercial enterprise, had fatally succeeded in their attempts at the epoch of the war. Commerce, the vital spring of New England's prosperity, was annihilated. Embargoes, restrictions, and the rapacity of revenue officers, had completed its destruction. The various objects for the employment of productive labor, in the branches of business dependent on commerce, have disappeared. The fisheries have shared its fate. Manufactures, which government has professed an intention to favor and to cherish, as an indemnity for the failure of these branches of business, are doomed to struggle in their infancy with taxes and obstructions, which cannot fail most seriously to affect their growth. The specie is withdrawn from circulation.

The landed interest, the last to feel these burdens, must prepare to become their principal support, as all other sources of revenue must be exhausted. Under these circumstances, taxes, of a description and amount unprecedented in this country, are in a train of imposition, the burden of which must fall with the heaviest pressure upon the states east of the Potomac. The amount of these taxes for the ensuing year, cannot be estimated at less than five millions of dollars upon the New-England states, and the expenses of the last year for defence, in Massachusetts, alone approaches to one million of dollars.

From these facts, it is almost superfluous to state the irresistible inference, that these states have no capacity of defraying the expense requisite for their own protection, and, at the same time, of discharging the demands of the national treasury.

The last inquiry, what course of conduct ought to be adopted by the aggrieved states, is in a high degree momentous. When a great and brave people shall feel themselves deserted by their government, and reduced to the necessity either of submission to a foreign enemy, or of appropriating to their own use those means of defence which are indispensable to self-preservation, they cannot consent to wait passive spectators of approaching ruin, which it is in their power to avert, and to resign the last remnant of their industrious earnings to be dissipated in support of measures destructive of the best interests of the nation.

This Convention will not trust themselves to express their conviction of the catastrophe to which such a state of things inevitably tends. Conscious of their high responsibility to God and their country, solicitous for the continuance of the Union, as well as the sovereignty of the states, unwilling to furnish obstacles to peace—resolute never to submit to a foreign enemy, and confiding in the Divine care and protection, they will, until the last hope shall be extinguished, endeavor to avert such consequences.

With this view they suggest an arrangement, which may at once be consistent with the honor and interest of the National Government, and the security of these states. This it will not be difficult to conclude, if that government should be so disposed. By the terms of it these states might be allowed to assume their own defence, by the militia or other troops. A reasonable portion, also, of the taxes raised in each state might be paid into its treasury, and credited to the United States, but to be appropriated to the defence of such state, to be accounted for with the United States. No doubt is entertained that, by such an arrangement, this portion of the country could be defended with greater effect, and in a mode more consistent with economy, and the public convenience, than any which has been practised.

Should an application for these purposes, made to Congress by the state legislatures, be attended with success, and should peace upon just terms appear to be unattainable, the people would stand together for the common defence, until a change of Administration, or of disposition in the enemy, should facilitate the occurrence of that auspicious event. It would be inexpedient for this Convention to diminish the hope of a successful issue to such an application, by recommending, upon supposition of a contrary event, ulterior proceedings. Nor is it indeed within their province. In a state of things so solemn and trying as may then arise, the legislatures of the states, or Conventions of the whole

people, or delegates appointed by them for the express purpose in another Convention, must act as such urgent circumstances may then require.

But the duty incumbent on this Convention will not have been performed, without exhibiting some general view of such measures as they deem essential to secure the nation against a relapse into difficulties and dangers, should they, by the blessing of Providence, escape from their present condition without absolute ruin. To this end a concise retrospect of this nation under the advantages of a wise Administration, contrasted with the miserable abyss into which it is plunged by the profligacy and folly of political theorists, will lead to some practical conclusions. On this subject, it will be recollected that the immediate influence of the Federal Constitution upon its first adoption, and for twelve succeeding years, upon the prosperity and happiness of the nation, seemed to countenance a belief in the transcendency of its perfection over all other human institutions. In the catalogue of blessings which have fallen to the lot of the most favored nations, none could be enumerated from which our country was excluded. A free Constitution, administered by great and incorruptible statesmen, realized the fondest hopes of liberty and independence. The progress of agriculture was stimulated by the certainty of value in the harvest—and commerce, after traversing every sea, returned with the riches of every clime. A revenue, secured by a sense of honor, collected without oppression, and paid without murmurs, melted away the national debt; and the chief concern of the public creditor arose from its too rapid diminution. The wars and commotions of the European nations, and the interruptions of their commercial intercourse afforded to those, who had not promoted, but who would have rejoiced to alleviate their calamities, a fair and golden opportunity, by enriching themselves to lay a broad foundation for national wealth. Although occasional vexations to commerce arose from the furious collisions of the powers at war, yet the great and good men of that time conformed to the force of circumstances which they could not control, and preserved their country in security from the tempests which overwhelmed the old world, and threw the wreck of their fortunes on these shores. Respect abroad, prosperity at home, wise laws made by honored legislators, and prompt obedience yielded by a contented people, had silenced the enemies of republican institutions. The arts flourished—the sciences were cultivated—the comforts and conveniences of life were universally diffused—and nothing remained for succeeding administrations, but to reap the advantages, and cherish the resources, flowing from the policy of their predecessors.

But no sooner was a new administration established in the hands of the party opposed to the Washington policy, than a fixed determination was perceived and avowed of changing a system which had already produced these substantial fruits. The consequences of this change, for a few years after its commencement, were not sufficient to counteract the prodigious impulse towards prosperity, which had been given to the nation. But a steady perseverance in the new plans of administration at length developed their weakness and deformity, but not until a majority of the people had been deceived by flattery, and inflamed by passion, into blindness to their defects. Under the withering influence of this new system, the declension of the nation has been uniform and rapid. The richest advantages for securing the great objects of the Consti-

tution have been wantonly rejected. While Europe reposes from the convulsions that had shaken down her ancient institutions, she beholds with amazement this remote country, once so happy and so envied, involved in a ruinous war, and excluded from intercourse with the rest of the world.

To investigate and explain the means whereby this fatal reverse has been effected, would require a voluminous discussion. Nothing more can be attempted in this report, than a general allusion to the principal outlines of the policy which has produced this vicissitude. Among these may be enumerated—

First. A deliberate and extensive system for effecting a combination among certain states, by exerting local jealousies and ambition, so as to secure to popular leaders in one section of the Union, the control of public affairs, in perpetual success. To which primary object most other characteristics of the system may be reconciled.

Secondly. The political intolerance displayed and avowed, in excluding from office men of unexceptionable merit, for want of adherence to the executive creed.

Thirdly. The infraction of the judiciary authority and rights, by depriving judges of their offices in violation of the Constitution.

Fourthly. The abolition of existing taxes, requisite to prepare the country for those changes to which nations are always exposed, with a view to the acquisition of popular favor.

Fifthly. The influence of patronage in the distribution of offices, which in these states has been almost invariably made among men the least entitled to such distinction, and who have sold themselves as ready instruments for distracting public opinion, and encouraging administration to hold in contempt the wishes and remonstrances of a people thus apparently divided.

Sixthly. The admission of new states into the Union, formed at pleasure in the western region, has destroyed the balance of power which existed among the original states, and deeply affected their interest.

Seventhly. The easy admission of naturalized foreigners to places of trust, honor or profit, operating as an inducement to the malcontent subjects of the old world to come to these states, in quest of executive patronage, and to repay it by an abject devotion to executive measures.

Eighthly. Hostility to Great Britain, and partiality to the late government of France, adopted as coincident with popular prejudice, and subservient to the main object, party power. Connected with these must be ranked erroneous and distorted estimates of the power and resources of those nations, of the probable results of their controversies, and of our political relations to them respectively.

Lastly and principally. A visionary and superficial theory in regard to commerce, accompanied by a real hatred, but a feigned regard, to its interests, and a ruinous perseverance in efforts to render it an instrument of coercion and war.

But it is not conceivable that the obliquity of any administration could, in so short a period, have so nearly consummated the work of national ruin, unless favored by defects in the constitution.

To enumerate all the improvements of which that instrument is susceptible, and to propose such amendments as might render it in all respects perfect, would be a task, which this convention has not thought proper to assume. They have confined their attention to such as ex-

perience has demonstrated to be essential, and even among these some are considered entitled to a more serious attention than others. They are suggested without any intentional disrespect to other states, and are meant to be such as all shall find an interest in promoting. Their object is to strengthen, and if possible to perpetuate, the Union of the states, by removing the grounds of existing jealousies, and providing for a fair and equal representation, and a limitation of powers which have been misused.

The first amendment proposed, relates to the apportionment of representatives among the slave holding states. This cannot be claimed as a right. Those states are entitled to the slave representation, by a constitutional compact. It is therefore merely a subject of agreement, which should be conducted upon principles of mutual interest and accommodation, and upon which no sensibility on either side should be permitted to exist. It has proved unjust and unequal in its operation. Had this effect been foreseen, the privilege would probably not have been demanded; certainly not conceded. Its tendency in future will be adverse to that harmony and mutual confidence, which are more conducive to the happiness and prosperity of every confederated state, than a mere preponderance of power, the prolific source of jealousies and controversy, can be to any one of them. The time may therefore arrive, when a sense of magnanimity and justice will reconcile those states to acquiesce in a revision of this article, especially as a fair equivalent would result to them in the apportionment of taxes.

The next amendment relates to the admission of new states into the Union.

This amendment is deemed to be highly important, and in fact indispensable. In proposing it, it is not intended to recognise the right of Congress to admit new states without the original limits of the United States, nor is any idea entertained of disturbing the tranquility of any state already admitted into the Union. The object is merely to restrain the constitutional power of Congress in admitting new states. At the adoption of the Constitution, a certain balance of power among the original parties was considered to exist, and there was at that time, and yet is, among those parties, a strong affinity between their great and general interests. By the admission of these states, that balance has been materially affected, and unless the practice be modified, must ultimately be destroyed. The southern states will first avail themselves of their new confederates to govern the east, and finally the western states multiplied in number, and augmented in population, will control the interests of the whole. Thus for the sake of present power, the southern states will be common sufferers with the east, in the loss of permanent advantages. None of the old states can find an interest in creating prematurely an overwhelming western influence, which may hereafter discern (as it has heretofore) benefits to be derived to them by wars and commercial restrictions.

The next amendments proposed by the convention, relate to the powers of Congress, in relation to embargo and the interdiction of commerce.

Whatever theories upon the subject of commerce have hitherto divided the opinions of statesmen, experience has at last shown, that it is a vital interest in the United States, and that its success is essential to the encouragement of agriculture and manufactures, and to the wealth, finances, defence, and liberty of the nation. Its welfare can never interfere

with the other great interests of the state, but must promote and uphold them. Still, those who are immediately concerned in the prosecution of commerce, will, of necessity, be always a minority of the nation. They are, however, best qualified to manage and direct its course by the advantages of experience, and the sense of interest. But they are entirely unable to protect themselves against the sudden and injudicious decisions of bare majorities, and the mistaken or oppressive projects of those who are not actively concerned in its pursuits. Of consequence, this interest is always exposed to be harrassed, interrupted, and entirely destroyed, upon pretence of securing other interests. Had the merchants of this nation been permitted, by their own government, to pursue an innocent and lawful commerce, how different would have been the state of the treasury and of public credit! How shortsighted and miserable is the policy which has annihilated this order of men, and doomed their ships to rot in the docks, their capital to waste unemployed, and their affections to be alienated from the government which was formed to protect them! What security for an ample and unfailing revenue can ever be had, comparable to that which once was realized in the good faith, punctuality, and sense of honor, which attached the mercantile class to the interests of the government? Without commerce, where can be found the aliment for a navy; and without a navy, what is to constitute the defence, and ornament, and glory of this nation? No union can be durably cemented, in which every great interest does not find itself reasonably secured against the encroachment and combinations of other interests. When, therefore, the past system of embargoes and commercial restrictions shall have been reviewed—when the fluctuation and inconsistency of public measures, betraying a want of information as well as feeling in the majority, shall have been considered, the reasonableness of some restrictions upon the power of a bare majority to repeat these oppressions, will appear to be obvious.

The next amendment proposes to restrict the power of making offensive war. In the consideration of this amendment, it is not necessary to inquire into the justice of the present war. But one sentiment now exists in relation to its expediency, and regret for its declaration is nearly universal. No indemnity can ever be attained for this terrible calamity, and its only palliation must be found in obstacles to its future recurrence. Rarely can the state of this country call for or justify offensive war. The genius of our institutions is unfavorable to its successful prosecution; the felicity of our situation exempts us from its necessity. In this case, as in the former, those more immediately exposed to its fatal effects are a minority of the nation. The commercial towns, the shores of our seas and rivers contain the population, whose vital interests are most vulnerable by a foreign enemy. Agriculture, indeed, must feel at last; but this appeal to its sensibility comes too late. Again, the immense population which has swarmed into the West, remote from immediate danger, and which is constantly augmenting, will not be averse from the occasional disturbances of the Atlantic states. Thus interest may not unfrequently combine with passion and intrigue, to plunge the nation in needless wars, and compel it to become a military, rather than a happy and flourishing people. These considerations, which it would be easy to augment, call loudly for the limitation proposed in the amendment.

Another amendment, subordinate in importance, but still in a high degree expedient, relates to the exclusion of foreigners, hereafter arriving

in the United States; from the capacity of holding offices of trust, honor, or profit.

That the stock of population already in these states, is amply sufficient to render this nation in due time sufficiently great and powerful, is not a controvertible question—nor will it be seriously pretended, that the national deficiency in wisdom, arts, science, arms, or virtue, needs to be replenished from foreign countries. Still, it is agreed that a liberal policy should offer the rights of hospitality, and the choice of settlement, to those who are disposed to visit the country. But why admit to a participation in the government aliens who were no parties to the compact—who are ignorant of the nature of our institutions, and have no stake in the welfare of the country, but what is recent and transitory? It is surely a privilege sufficient, to admit them, after due probation, to become citizens, for all but political purposes. To extend it beyond these limits, is to encourage foreigners to come to these states as candidates for preferment. The Convention forbear to express their opinion upon the inauspicious effects which have already resulted to the honor and peace of this nation, from this misplaced and indiscriminate liberality.

The last amendment respects the limitation of the office of President to a single constitutional term, and his eligibility from the same state two terms in succession.

Upon this topic it is superfluous to dilate. The love of power is a principle in the human heart, which too often impels to the use of all practicable means to prolong its duration. The office of President has charms and attractions which operate as powerful incentives to this passion. The first and most natural exertion of a vast patronage is directed towards the security of a new election. The interest of the country, the welfare of the people, even honest fame and respect for the opinion of posterity, are secondary considerations. All the engines of intrigue, all the means of corruption, are likely to be employed for this object. A president, whose political career is limited to a single election, may find no other interest than will be promoted by making it glorious to himself, and beneficial to his country. But the hope of reelection is prolific of temptations, under which these magnanimous motives are deprived of their principal force. The repeated election of the President of the United States from any one state, affords inducements and means for intrigue, which tend to create an undue local influence, and to establish the domination of particular states. The justice, therefore, of securing to every state a fair and equal chance for the election of this officer from its own citizens, is apparent, and this object will be essentially promoted by preventing an election from the same state twice in succession.

Such is the general view which this Convention has thought proper to submit of the situation of these states, of their dangers and their duties. Most of the subjects which it embraces have separately received an ample and luminous investigation, by the great and able assertors of the rights of their country, in the National Legislature; and nothing more could be attempted on this occasion, than a digest of general principles, and of recommendations, suited to the present state of public affairs. The peculiar difficulty and delicacy of performing, even this undertaking, will be appreciated by all who think seriously upon the crisis. Negotiations for peace are at this hour supposed to

be pending, the issue of which must be deeply interesting to all. No measures should be adopted, which might unfavorably affect that issue; none which should embarrass the Administration, if their professed desire for peace is sincere; and none, which on supposition of their insincerity, should afford them pretexts for prolonging the war, or relieving themselves from the responsibility of a dishonorable peace. It is also devoutly to be wished that an occasion may be afforded to all friends of the country, of all parties, and in all places, to pause and consider the awful state to which pernicious counsels, and blind passions, have brought this people. The number of those who perceive, and who are ready to retrace errors, must, it is believed, be yet sufficient to redeem the nation. It is necessary to rally and unite them by the assurance that no hostility to the constitution is meditated, and to obtain their aid in placing it under guardians, who alone can save it from destruction. Should this fortunate change be effected, the hope of happiness and honor may once more dispel the surrounding gloom. Our nation may yet be great, our union durable. But should this prospect be utterly hopeless, the time will not have been lost, which shall have ripened a general sentiment of the necessity of more mighty efforts to rescue from ruin, at least some portion of our beloved country.

Therefore Resolved, That it be, and hereby is, recommended to the Legislatures of the several states represented in this Convention, to adopt all such measures as may be necessary effectually to protect the citizens of said states from the operation and effects of all acts which have been or may be passed by the Congress of the United States, which shall contain provision, subjecting the militia or other citizens to forcible drafts, conscriptions, or impressments, not authorized by the Constitution of the United States.

Resolved, That it be and hereby is recommended to the said legislatures, to authorize an immediate and earnest application to be made to the government of the United States, requesting their consent to some arrangement, whereby the said states may, separately or in concert, be empowered to assume upon themselves the defence of their territory against the enemy; and a reasonable portion of the taxes, collected within said states, may be paid into the respective treasuries thereof, and appropriated to the payment of the balance due said states, and to the future defence of the same. The amount so paid into the said treasuries to be credited, and the disbursements made as aforesaid to be charged to the United States.

Resolved, That it be, and it hereby is, recommended to the legislatures of the aforesaid states, to pass laws (where it has not already been done) authorizing the governors or commanders in chief of their militia to make detachments from the same, or to form voluntary corps, as shall be most convenient and conformable to their constitutions, and to cause the same to be well armed, equipped and disciplined, and held in readiness for service; and upon the request of the governor of either of the other states, to employ the whole of such detachment or corps, as well as the regular forces of the state, or such part thereof as may be required and can be spared consistently with the safety of the state, in assisting the state, making such request to repel any invasion thereof which shall be made or attempted by the public enemy.

Resolved, That the following amendments of the constitution of the United States be recommended to the states represented as aforesaid,

to be proposed by them for adoption by the state legislatures, and, in such cases as may be deemed expedient, by a convention chosen by the people of each state.

And it is further recommended that the said states shall persevere in their efforts to obtain such amendments, until the same shall be effected.

First. Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers of free persons, including those bound to serve for a term of years, and including Indians not taxed, and all other persons.

Second. No new state shall be admitted into the Union by Congress in virtue of the power granted by the constitution, without the concurrence of two thirds of both houses.

Third. Congress shall not have power to lay any embargo on the ships or vessels of the citizens of the United States, in the ports or harbors thereof, for more than sixty days.

Fourth. Congress shall not have power, without the concurrence of two thirds of both houses, to interdict the commercial intercourse between the United States and any foreign nation or the dependencies thereof.

Fifth. Congress shall not make or declare war, or authorize acts of hostility against any foreign nation, without the concurrence of two thirds of both houses, except such acts of hostility be in defence of the territories of the United States when actually invaded.

Sixth. No person who shall hereafter be naturalized, shall be eligible as a member of the Senate or House of Representatives of the United States, nor capable of holding any civil office under the authority of the United States.

Seventh. The same person shall not be elected president of the United States a second time; nor shall the president be elected from the same state two terms in succession.

Resolved. That if the application of these states to the government of the United States, recommended in a foregoing resolution, should be unsuccessful, and peace should not be concluded, and the defence of these states should be neglected, as it has been since the commencement of the war, it will in the opinion of this convention be expedient for the legislatures of the several states to appoint delegates to another convention, to meet at Boston, in the state of Massachusetts, on the third Thursday of June next, with such powers and instructions as the exigency of a crisis so momentous may require.

Resolved, That the Hon. George Cabot, the Hon. Chauncey Goodrich, and the Hon. Daniel Lyman, or any two of them, be authorized to call another meeting of this convention, to be holden in Boston, at any time before new delegates shall be chosen, as recommended in the above resolution, if in their judgment the situation of the country shall urgently require it.

George Cabot, Nathan Dane, William Prescott, Harrison Gray Otis, Timothy Bigelow, Joshua Thomas, Samuel Sumner Wilde, Joseph Lyman, Stephen Longfellow, Jr., Daniel Waldo, Hodijah Baylies, George Bliss, Chauncey Goodrich, James Hillhouse, John Treadwell, Zephaniah Swift, Nathaniel Smith, Calvin Goddard, Roger Minott Sherman, Daniel Lyman, Samuel Ward, Edward Manton, Benjamin Hazard, Benjamin West, Mills Olcott, Wm. Hall, Jr. of Vermont.

HARTFORD, January 4th, 1815.

SPEECHES

OF

MESSRS. HAYNE AND WEBSTER.

Extracts from the Speeches of Hon. ROBERT Y. HAYNE, of South Carolina, and Hon. DANIEL WEBSTER, of Massachusetts, delivered in the Senate of the United States, Jan. 21 and 26, 1830.

On Tuesday, December 29, 1829, Mr. Foot, of Connecticut, submitted to the Senate the following resolution:

Resolved, That the committee on public lands be instructed to inquire into the expediency of limiting for a certain period the sales of the public lands to such lands only as have heretofore been offered for sale, and are subject to entry at the minimum price. And also, whether the office of Surveyor General may not be abolished without detriment to the public interest.

After discussion on this resolution by several senators, Mr. Webster replied to some remarks of Mr. Hayne on the 20th of January, to which the latter made a rejoinder on the following day.

"Who then, Mr. President, are the true friends of the Union? Those who would confine the federal government strictly within the limits prescribed by the Constitution; who would preserve to the states and the people all powers not expressly delegated; who would make this a federal and not a national Union, and who, administering the government in a spirit of equal justice, would make it a blessing and not a curse. And who are its enemies? Those who are in favor of consolidation—who are constantly stealing power from the states, and adding strength to the federal government. Who, assuming an unwarrantable jurisdiction over the states and the people, undertake to regulate the whole industry and capital of the country. But, sir, of all descriptions of men, I consider those as the worst enemies of the Union, who sacrifice the equal rights which belong to every member of the confederacy, to combinations of interested majorities, for personal or political objects. But the gentleman apprehends no evil from the dependence of the states on the federal government; he can see no danger of corruption from the influence of money or of patronage. Sir, I know that it is supposed to be a wise saying, 'that patronage is a source of weakness,' and in support of that maxim, it has been said, that 'every ten appointments makes a hundred enemies.' But I am rather inclined to think, with the eloquent and sagacious orator now reposing on his laurels on the banks of the Roanoke, that 'the power of conferring favors creates a crowd of dependants;' he gave a forcible illustration of the truth of the remark when he told us of the effect of holding up the savory morsel to the eager eyes of the hungry hounds gathered

around his door. It mattered not whether the gift was bestowed on Towser or Sweetlips, 'Tray, Blanch, or Sweetheart,' while held in suspense, they were all governed by a nod, and when the morsel was bestowed, the expectation of the favors of tomorrow, kept up the subjection of today.

"The senator from Massachusetts, in denouncing what he is pleased to call the Carolina doctrine, has attempted to throw ridicule upon the idea that a state has any constitutional remedy, by the exercise of its sovereign authority, against 'a gross, palpable, and deliberate violation of the constitution.' He calls it 'an idle' or 'a ridiculous notion,' or something to that effect, and added, that it would make the Union 'a mere rope of sand.' Now, sir, as the gentleman has not condescended to enter into any examination of the question, and has been satisfied with throwing the weight of his authority into the scale, I do not deem it necessary to do more than throw into the opposite scale the authority on which South Carolina relies, and there, for the present, I am perfectly willing to leave the controversy. The South Carolina doctrine, that is to say, the doctrine contained in an exposition reported by a committee of the legislature in December, 1828, and published by their authority, is the good old republican doctrine of '98—the doctrine of the celebrated 'Virginia Resolutions' of that year, and of 'Madison's Report' of '99."

After quoting the Kentucky Resolutions of 1798, Mr. Madison's Report, and the opinions of Mr. Jefferson and others on state rights, &c., Mr. H. concluded as follows:

"Thus, it will be seen, Mr. President, that the South Carolina doctrine is the republican doctrine of '98; that it was promulgated by the fathers of the faith—that it was maintained by Virginia and Kentucky in the worst of times—that it constituted the very pivot on which the political revolution of that day turned—that it embraces the very principles, the triumph of which, at that time, saved the constitution at its last gasp, and which New England statesmen were not unwilling to adopt, when they believed themselves to be the victims of unconstitutional legislation. Sir, as to the doctrine that the federal government is the exclusive judge of the extent as well as the limitations of its powers, it seems to me to be utterly subversive of the sovereignty and independence of the states. It makes but little difference, in my estimation, whether Congress or the supreme court are invested with this power. If the federal government, in all or any of its departments, are to prescribe the limits of its own authority, and the states are bound to submit to the decision, and are not to be allowed to examine and decide for themselves, when the barriers of the constitution shall be overleaped, this is practically a 'government without limitation of powers.' The states are at once reduced to mere petty corporations, and the people are entirely at your mercy. I have but one word more to add. In all the efforts that have been made by South Carolina, to resist the unconstitutional laws which Congress has extended over them, she has kept steadily in view the preservation of the Union, by the only means by which she believes it can be long preserved—a firm, manly, and steady resistance against usurpation. The measures of the federal government have, it is true, prostrated her interests, and will soon involve the whole South in irretrievable ruin. But even this evil, great

as it is, is not the chief ground of our complaints. It is the principle involved in the contest, a principle which, substituting the discretion of Congress for the limitations of the Constitution, brings the states and the people to the feet of the federal government, and leaves them nothing they can call their own. Sir, if the measures of the federal government were less oppressive, we should still strive against this usurpation. The South is acting on a principle she has always held sacred—resistance to unauthorized taxation. These, sir, are the principles which induced the immortal Hampden to resist the payment of a tax of twenty shillings. Would twenty shillings have ruined his fortune? No! but the payment of half twenty shillings, on the principle on which it was demanded, would have made him a slave. Sir, if in acting on these high motives—if animated by that ardent love of liberty which has always been the most prominent trait in the Southern character—we should be hurried beyond the bounds of a cold and calculating prudence, who is there, with one noble and generous sentiment in his bosom, that would not be disposed, in the language of Burke, to exclaim, 'You must pardon something to the spirit of liberty!'

EXTRACTS FROM MR. WEBSTER'S SPEECH IN REPLY
TO MR. HAYNE.

"I must now beg to ask, sir, whence is this supposed right of the states derived? where do they find the power to interfere with the laws of the Union? Sir, the opinion which the honorable gentleman maintains is a notion, founded in a total misapprehension, in my judgment, of the origin of this government, and of the foundation on which it stands. I hold it to a popular government, erected by the people; those who administer it responsible to the people; and itself capable of being amended and modified, just as the people may choose it should be. It is as popular, just as truly emanating from the people, as the state governments. It is created for one purpose; the state governments for another. It has its own powers; they have theirs. There is no more authority with them to arrest the operation of a law of Congress than with Congress to arrest their laws. We are here to administer a Constitution emanating immediately from the people, and trusted, by them, to our administration. It is not the creature of the state governments. It is of no moment to the argument that certain acts of the state legislatures are necessary to fill our seats in this body. That is not one of their original state powers, a part of the sovereignty of the state. It is a duty which the people, by the constitution itself, have imposed on the state legislatures; and which they might have left to be performed elsewhere, if they had seen fit. So they have left the choice of President, with electors; but all this does not affect the proposition, that this government, President, Senate, and House of Representatives, is a popular government. It leaves it still all its popular character. The governor of a state (in some of the states) is chosen, not directly by the people, but by those who are chosen by the people, for the purpose of

performing, among other duties, that of electing a governor. Is the government of a state, on that account, not a popular government? This government, sir, is the independent offspring of the popular will. It is not the creature of state legislatures; nay, more, if the whole truth must be told, the people brought it into existence, established it, and have hitherto supported it, for the very purpose, amongst others, of imposing certain salutary restraints on state sovereignties. The states cannot now make war; they cannot contract alliances; they cannot make each for itself, separate regulations of commerce; they cannot lay imposts; they cannot coin money. If this constitution, sir, be the creature of state legislatures, it must be admitted that it has obtained a strange control over the volitions of its creators.

The people, then, sir, erected this government. They gave it a constitution, and in that constitution they have enumerated the powers which they bestow on it. They have made it a limited government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all others they declare are reserved to the states or the people. But, sir, they have not stopped here. If they had, they would have accomplished but half their work. No definition can be so clear as to avoid possibility of doubt; no limitation so precise, as to exclude all uncertainty. Who, then, shall construe this grant of the people? Who shall interpret their will where it may be supposed they have left it doubtful? With whom do they repose this ultimate right of deciding on the powers of the government? Sir, they have settled all this in the fullest manner. They have left it with the government itself, in its appropriate branches. Sir, the very chief end, the main design, for which the whole constitution was framed and adopted, was to establish a government that should not be obliged to act through state agency, or depend on state opinion and state discretion. The people have had quite enough of that kind of government, under the confederacy. Under that system, the legal action—the application of law to individuals, belonged exclusively to the states. Congress could only recommend—their acts were not of binding force, till the states had adopted and sanctioned them. Are we in that condition still? Are we yet at the mercy of state discretion, and state construction? Sir, if we are, then vain will be our attempt to maintain the constitution under which we sit.

But, sir, the people have wisely provided, in the constitution itself, a proper, suitable mode and tribunal for settling questions of constitutional law. There are, in the constitution, grants of powers to Congress; and restrictions on these powers. There are, also, prohibitions on the states. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. The constitution has itself pointed out, ordained, and established that authority. How has it accomplished this great and essential end? By declaring, sir, that "*the Constitution and the laws of the United States made in pursuance thereof, shall be the supreme law of the land, anything in the constitution or laws of any state, to the contrary notwithstanding.*"

This, sir, was the first great step. By this, the supremacy of the constitution and laws of the United States is declared. The people so will it. No state law is to be valid, which comes in conflict with the constitution, or any law of the United States. But who shall decide

this question of interference? To whom lies the last appeal? This, sir, the constitution itself decides, also, by declaring; "*that the judicial power shall extend to all cases arising under the constitution and laws of the United States.*" These two provisions, sir, cover the whole ground. They are in truth, the key-stone of the arch. With these, it is a constitution; without them it is a confederacy. In pursuance of these clear and express provisions, Congress established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the Supreme Court. It then, sir, became a government. It then had the means of self-protection; and, but for this, it would in all probability have been now among things which are past. Having constituted the government, and declared its powers, the people have further said, that since somebody must decide on the extent of these powers, the government shall itself decide; subject, always, like other popular governments, to its responsibility to the people. And now, sir, I repeat, how is it that a state legislature acquires any power to interfere? Who or what gives them the right to say to the people, "We, who are your agents and servants for one purpose, will undertake to decide, that your other agents and servants, appointed by you for another purpose, have transcended the authority you gave them!" The reply would be, I think, not impertinent—"Who made you a judge over another's servants? To their own masters they stand or fall."

Sir, I deny this power of state Legislatures altogether. It cannot stand the test of examination. Gentlemen may say that, in an extreme case, a state government might protect the people from intolerable oppression. Sir, in such a case, the people might protect themselves, without the aid of the state governments. Such a case warrants revolution. It must make, when it comes, a law for itself. A nullifying act of a state legislature cannot alter the case nor make resistance any more lawful. In maintaining these sentiments, sir, I am but asserting the rights of the people. I state what they have declared, and insist on their right to declare it. They have chosen to repose this power in the general government, and I think it my duty to support it, like other constitutional powers.

For myself, sir, I do not admit the jurisdiction of South Carolina, or any other state, to prescribe my constitutional duty, or to settle, between me and the people, the validity of laws of Congress, for which I have voted. I decline her umpirage. I have not sworn to support the constitution according to her construction of its clauses. I have not stipulated, by my oath of office, or otherwise, to come under any responsibility, except to the people, and those whom they have appointed to pass upon the question, whether laws, supported by my votes, conform to the constitution of the country. And, sir, if we look to the general nature of the case, could any thing have been more preposterous, than to make a government for the whole union, and yet leave its powers subject, not to one interpretation, but to thirteen or twenty-four interpretations? Instead of one tribunal, established by all, responsible to all, with power to decide for all—shall constitutional questions be left to four and twenty popular bodies, each at liberty, too, to give a new construction on every new election of its own members? Would any thing, with such a principle in it, or rather with such a destitution of all principle, be fit to be called a government? No, sir. It should not be

denominated a constitution. It should be called, rather, a collection of topics for everlasting controversy; heads of debate for a disputatious people. It would not be a government. It would not be adequate to any good, nor fit for any country to live under. To avoid all possibility of being misunderstood, allow me to repeat again in the fullest manner, that I claim no powers for the government by forced or unfair construction. I admit that it is a government of strictly limited powers; of enumerated, specified, and particularised powers; and that whatsoever is not granted, is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limit and extent may yet in some cases, admit of doubt; and the general government would be good for nothing, it would be incapable of long existing, if some mode had not been provided, in which those doubts, as they should arise, might be peaceably, but authoritatively, solved.

Mr. President, I have thus stated the reasons of my dissent to the doctrines which have been advanced and maintained. I am conscious of having detained you and the Senate too long. I was drawn into the debate, with no previous deliberation, such as is suited to the discussion of so grave and important a subject. But it is a subject of which my heart is full, and I have not been willing to suppress the utterance of its spontaneous sentiments. I cannot even now persuade myself to relinquish it, without expressing, once more, my deep conviction, that since it respects nothing less than the union of the states, it is of most vital and essential importance to the public happiness. I profess, sir, in my career, hitherto, to have kept steadily in view the prosperity and honor of the whole country, and the preservation of our Federal Union. It is to that Union we owe our safety at home, and our consideration and dignity abroad. It is to that Union that we are chiefly indebted to whatever makes us most proud of our country. That Union we reached only by the discipline of our virtues in the severe school of adversity. It had its origin in the necessities of disordered finance, prostrate commerce, and ruined credit. Under its benign influences, these great interests immediately awoke, as from the dead, and sprang forth with newness of life. Every year of its duration has teemed with fresh proofs of its utility and its blessings; and, although our territory has stretched out wider and wider, and our population spread farther and farther, they have not outrun its protection or its benefits. It has been to us all a copious fountain of national, social, and personal happiness. I have not allowed myself, sir, to look beyond the Union, to see what might be hidden in the dark recess behind. I have not coolly weighed the chances of preserving liberty when the bonds that unite us together shall be broken asunder. I have not accustomed myself to hang over the precipice of disunion, to see whether, with my short sight, I can fathom the depth of the abyss below; nor could I regard him as a safe counsellor in the affairs of this government, whose thoughts should be mainly bent on considering, not how the Union should be best preserved, but how tolerable might be the condition of the people when it shall be broken up and destroyed. While the Union lasts, we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that I seek not to penetrate the veil. God grant that, in my day at least, that curtain may not rise. God grant that on my vision never may be opened what lies behind. When my eyes shall be turned to behold, for the last time, the sun in Heaven, may I not see him shining

on the broken and dishonored fragments of a once glorious Union; on states dismembered, discordant, belligerent: on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance rather behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, nor a single star obscured, bearing for its motto no such miserable interrogatory as, *What is all this worth?* nor those other words of delusion and folly, *Liberty first and Union afterwards*—but every where, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole Heavens, that other sentiment, dear to every true American heart—“*Liberty and Union, now and for ever, one and inseparable!*”

SOUTH CAROLINA ORDINANCE.

PASSED IN CONVENTION, AT COLUMBIA, NOV. 24, 1832.

An Ordinance to nullify certain acts of the Congress of the United States, purporting to be the laws giving duties and imposts on the importation of foreign commodities.

Whereas the Congress of the United States, by various acts purporting to be acts laying duties and imposts on foreign imports, but in reality intended for the protection of domestic manufactures, and the giving of bounties to classes and individuals engaged in particular employment, at the expense and to the injury and oppression of other classes and individuals, and by wholly exempting from taxation certain foreign commodities, such as are not produced or manufactured in the United States, to afford a pretext for imposing higher and excessive duties on articles similar to those intended to be protected, hath exceeded its just powers under the constitution, which confers on it no authority to afford such protection, and hath violated the true meaning and intent of the constitution, which provides for equality in imposing the burdens of taxation upon the several states and portions of the confederacy. And whereas the said Congress, exceeding its just power to impose taxes and collect revenue for the purpose of effecting and accomplishing, hath raised and collected unnecessary revenues, for objects unauthorized by the constitution:

We, therefore, the people of the state of Carolina in convention assembled, do declare and ordain, and it is hereby declared and ordained,

that the several acts and parts of acts of the Congress of the United States, purporting to be laws for the imposing of duties and imposts on the importations of the United States, and more especially an act entitled "an act in alteration of the several acts imposing duties on imports," approved on the nineteenth day of May, one thousand eight hundred and twenty eight, and also an act entitled "an act to alter and amend the several acts imposing duties on imports," approved on the fourteenth day of July, one thousand eight hundred and thirty two, are unauthorized by the constitution of the United States, and violate the true meaning thereof, and are null and void, and no law, now binding upon this state, its officers or citizens: and all promises, contracts, and obligations, made or entered into, with the purpose to secure the duties imposed by said acts, and all judicial proceedings which shall be hereafter had in affirmance thereof, are, and shall be, held utterly null and void.

And it is further ordained that it shall not be lawful for any of the constituted authorities, whether of this State or of the United States, to enforce the payment of duties imposed by the said acts within the limits of this state; but that it shall be the duty of the legislature to adopt such acts as may be necessary to give full effect to this Ordinance, and to prevent the enforcement and arrest the operation of the said acts and parts of acts of the Congress of the United States within the limits of this state, from and after the first day of February next, and the duty of all other constituted authorities, and of all persons residing or being within the limits of this state, and they are hereby required and enjoined to obey and give effect to this ordinance, and such acts and measures of the legislature as may be passed or adopted in obedience thereto.

And it is further ordained, that in no case of law or equity, decided in the court of this state, wherein shall be drawn in question the authority of this ordinance, or the validity of such act or acts of legislature as may be passed for the purpose of giving effect thereto, or the validity of the aforesaid acts of Congress, imposing duties, shall any appeal be taken, or allowed, to the Supreme Court of the United States, nor shall any copy of the record be permitted or allowed for that purpose; and if any such appeal shall be attempted to be taken, the courts of this state shall proceed to execute and enforce their judgments, according to the laws and usages of the state, without reference to such attempted appeal; and the persons attempting to take such appeal may be dealt with for a contempt of the court.

And be it further enacted, that all persons now holding any office of honor, profit or trust, civil or military, under this state, shall within such time as the legislature may prescribe, take, in such manner as the legislature may direct, an oath well and truly to obey, execute and enforce this ordinance, and such act or acts of the legislature as may be passed in pursuance thereof, according to the true intent and meaning of the same; and on the neglect or omission of any such person or persons so to do, his or their office or offices, shall be forthwith vacated, and shall be filled up, as if such person or persons were dead or had resigned, and no person hereafter elected to any office of honor, profit or trust, civil or military, shall, until the legislature shall otherwise provide and direct, enter on the execution of his office, or be in any respect competent to discharge the duties thereof, until he shall, in like manner, have

taken a similar oath; and no juror shall be impanelled in any of the courts of this state, in any cause in which shall be in question this ordinance, or any act of the legislature passed in pursuance thereof, unless he shall first, in addition to the usual oath, have taken an oath, that he will well and truly obey, execute and enforce this ordinance, and such act or acts of the legislature, as may be passed to carry the same into operation and effect, according to the true intent and meaning thereof.

And we, the people of South Carolina, to the end, that it may be fully understood by the government of the United States, and the people of the co-states, that we are determined to maintain this, our ordinance and declaration at every hazard, do further declare that we will not submit to the application of force, on the part of the Federal Government to reduce this state to obedience; but that we will consider the passage by Congress, of any act authorizing the employment of any military or naval force against the state of South Carolina, her constituted authorities or citizens, or any act abolishing or closing the ports of this state or any of them, or otherwise obstructing the free ingress and egress of vessels, to and from the said ports, or any other act on the part of the Federal Government to coerce the state, shut up her ports, destroy her commerce, or so enforce the acts hereby declared to be null and void, otherwise than through the civil tribunals of the country, as inconsistent with the longer continuance of South Carolina in the Union: and that the people of this state will thenceforth hold themselves absolved from all further obligation to maintain or preserve their political connexion with the people of other states, and will forthwith proceed to organize a separate government, and do all other acts and things, which sovereign and independent states may of right do.

SOUTH CAROLINA REMONSTRANCE

AND

PROTEST OF THE UNION AND STATE RIGHTS PARTY.

THE UNION AND STATE RIGHTS PARTY of South Carolina do *remonstrate and solemnly protest* against the Ordinance passed by the State Convention on the twenty fourth day of November last.

1st. Because the people of South Carolina elected delegates to the said convention under the solemn assurance that these delegates would do no more than devise a peaceable and constitutional remedy for the evils of the protective tariff, without endangering the Union of these states. Instead of which that convention has passed an *Ordinance in direct violation of all these pledges.*

2nd. Because the said *Ordinance* has insiduously assailed one of the inalienable rights of man, by endeavoring to enslave all freedom of conscience by the tyrannical engine of power—a *Test Oath*.

3rd. Because it has *disfranchised and proscribed* nearly one half of the Freeman of South Carolina, for an honest difference of opinion by declaring that those whose consciences will not permit them to take the test oath shall be *deprived of every office, civil and military*.

4th. Because it has trampled under foot the *great principles of Liberty secured to the citizen* by the constitution of this state in *depriving the freemen of this country of the right to an impartial trial by jury*, thereby violating that clause of the constitution intended to be *perpetual*, which declares that "The trial by jury as heretofore used in this state, and the liberty of the press, shall be forever inviolably preserved."

5th. Because it has violated the independence guaranteed to the *Judiciary*, by enacting that the judges shall take a revolting test oath, or be arbitrarily *removed from office*, thereby depriving them of the privilege of trial by impeachment, which, by the constitution of the state, is intended to be secured to every civil officer.

6th. Because the *Ordinance* has directly *violated the Constitution of the United States*, which gives authority to Congress to collect revenue, in forbidding the collection of any revenue within the limits of South Carolina.

7th. Because it has *violated the same Constitution*, in that provision of it which declares that no preference shall be given to one port over any other in the United States by enacting that goods shall be imported into the ports of South Carolina without paying any duties.

8th. Because it *violates the same Constitution*, and tramples upon the RIGHTS of the citizen by denying him the privilege of appeal in cases in *Law and Equity* arising under the *Constitution and Laws of the Union*.

9th. Because it has *virtually destroyed the Union* by carefully preventing the General Government from enforcing their laws through the civil tribunals of the country, and then enacting that if that Government should pursue any other mode to enforce them, then this STATE shall be no longer a member of the *Union*.

10th. Because the *tyranny and oppression* inflicted by this *Ordinance* are of a character so revolting, and the effects anticipated from it so ruinous, that the *commerce and credit* of the state are already sensibly affected, and will soon be *prostrated*; and its peaceable and industrious citizens are driven from their homes to seek tranquility in some other state.

The *Union Party of South Carolina*, in *Convention assembled*, do further remonstrate and solemnly protest against the project of a *Standing Army*, proposed by the party in power, as dangerous to the *liberties of the people*. They would respectfully ask their fellow citizens, whether such an army must not be confessedly inadequate to protect the *Nullification Party* against the *people* of the rest of the *United States*, should they resolve to coerce them. What other object, therefore, can such a force accomplish than to serve as an instrument of TYRANNY over their fellow citizens.

This *Convention* doth further *protest* against any effort, by a system of *Conscription*, to force the citizens of the state from their firesides and homes, to take up arms, and incur the pains and penalties of *trea-*

son, in support of a doctrine which the people were assured was pacific in its nature and utterly inconsistent with any idea of danger to the Constitution or the Union.

Solemnly remonstrating, as they hereby do, against the above mentioned grievances, *the Union Party* would further express their *FIRM DETERMINATION* to maintain the principles which have ever been the rule of their conduct; and while, on the one hand, they will continue their unfaltering opposition to the protective tariffs, so on the other they will not be driven from the enjoyment of these inalienable rights which, by inheritance, belong to every *American citizen*. Disclaiming, therefore, all intention of lawless or insurrectionary violence, they hereby *proclaim* their *determination* to protect their *rights* by all legal and constitutional means, and that in doing so they will continue to maintain the character of peaceable citizens, unless compelled to throw it aside by *intolerable oppression*.

THOMAS TAYLOR, *President*.

HENRY MIDDLETON,
DAVID JOHNSON,
RICHARD I. MANNING,
STARLING TUCKET, } *Vice Presidents*.

[Signed, in addition, by nearly one hundred and eighty members.]

Done at Columbia, on Friday, the 14th day of December, in the year of our Lord one thousand eight hundred and thirty-two, and in the fifty-seventh year of the Independence of the United States of America.

Attest:

FRANKLIN J. MOSES,
JAMES EDWARD HENRY, } *Secretaries of Convention*.

PROCLAMATION

BY ANDREW JACKSON,

PRESIDENT OF THE UNITED STATES.

WHEREAS, a Convention assembled in the state of South Carolina, have passed an Ordinance by which they declare, "That the several acts and parts of acts of the Congress of the United States, purporting to be laws for the imposing of duties and imposts on the importation of foreign commodities, and now having actual operation and effect within the United States, and more especially," two acts for the same purposes,

passed on the 29th of May, 1828, and on the 14th of July, 1833, "are unauthorized by the Constitution of the United States, and violate the true meaning and intent thereof, and are null and void, and no law," nor binding on the citizens of that state or its officers: and by the said Ordinance, it is further declared to be unlawful for any of the constituted authorities of the state, or of the United States, to enforce the payment of the duties imposed by the said acts within the same state, and that it is the duty of the legislature to pass such laws as may be necessary to give full effect to the said Ordinance.

And whereas, by the said Ordinance it is further ordained, that in no case of law or equity, decided in the courts of the said state, wherein shall be drawn in question the validity of the said Ordinance, or of the acts of the legislature that may be passed to give it effect, or of the said laws of the United States, no appeal shall be allowed to the Supreme Court of the United States, nor shall any copy of the record be permitted or allowed for that purpose, and that any person attempting to take such appeal shall be punished as for a contempt of court:

And, finally, the said ordinance declares, that the people of South Carolina will maintain the said Ordinance at every hazard; and that they will consider the passage of any act by Congress abolishing or closing the ports of the said state, or otherwise obstructing the free ingress or egress of vessels to and from the said ports, or any other act of the federal government to coerce the state, shut up her ports, destroy or harrass her commerce, or to enforce the said acts otherwise than through the civil tribunals of the country, as inconsistent with the longer continuance of South Carolina in the Union; and that the people of the said state will thenceforth hold themselves absolved from all further obligation to maintain or preserve their political connection with the people of the other states, and will forthwith proceed to organize a separate government, and do all other acts and things which sovereign and independent states may of right do;

And whereas, the said Ordinance prescribes to the people of South Carolina a course of conduct in direct violation of their duty as citizens of the United States, contrary to the laws of their country, subversive of its constitution, and having for its object the destruction of the Union—that Union which, coeval with our political existence, led our fathers, without any other ties to unite them than those of patriotism and a common cause, through a sanguinary struggle to a glorious independence—that sacred Union, hitherto inviolate, which, perfected by our happy Constitution, has brought us, by the favor of heaven, to a state of prosperity at home, and high consideration abroad, rarely, if ever, equalled in the history of nations. To preserve this bond of our political existence from destruction, to maintain inviolate this state of national honor and prosperity, and to justify the confidence my fellow citizens have reposed in me, I, ANDREW JACKSON, *President of the United States*, have thought proper to issue this my PROCLAMATION, stating my views of the Constitution and laws applicable to the measures adopted by the Convention of South Carolina, and to the reasons they have put forth to sustain them, declaring the course which duty will require me to pursue, and appealing to the understanding and patriotism of the people, warn them of the consequences that must inevitably result from an observance of the dictates of the Convention.

Strict duty would require of me nothing more than the exercise of those

powers with which I am now, or may hereafter be invested, for preserving the peace of the Union and for the execution of the laws. But the imposing aspect which opposition has assumed in this case, by clothing itself with state authority and the deep interest which the people of the United States must all feel in preventing a resort to stronger measures, while there is a hope that any will be yielded to reasoning and remonstrance, perhaps demand, and will certainly justify, a full exposition to South Carolina and the nation of the views I entertain on this important question, as well as a distinct enunciation of the course which my sense of duty will require me to pursue.

The Ordinance is founded, not on the indefeasible right of resisting acts which are plainly unconstitutional and too oppressive to be endured; but on the strange position that any one state may not only declare an Act of Congress void, but prohibit its execution—that they may do this consistently with the Constitution—that the true construction of that instrument permits a state to retain its place in the Union, and yet be bound by no other of its laws than those it may choose to consider as constitutional. It is true, they add, that to justify this abrogation of a law, it must be palpably, contrary to the Constitution; but it is evident, that to give the right of resisting laws of that description, coupled with the uncontrolled right to decide what laws deserve that character, is to give the power of resisting all laws. For, as by the theory, there is no appeal, the reasons alleged by the state, good or bad, must prevail. If it should be said that public opinion is a sufficient check against the abuse of this power, it may be asked why is it not deemed a sufficient guard against the passage of an unconstitutional Act by Congress. There is, however, a restraint in this last case, which makes the assumed power of a state more indefensible, and which does not exist in the other. There are two appeals from the unconstitutional Act passed by Congress—one to the Judiciary, the other to the People, and the States. There is no appeal from the State decision in theory, and the practical illustration shows that the courts are closed against an application to review it, both judges and jurors being sworn to decide in its favor. But reasoning on this subject is superfluous when our social compact in express terms declares that the laws of the United States, its Constitution and treaties made under it, are the supreme law of the land—and for greater caution adds, “that the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.” And it may be asserted without fear of refutation, that no Federative Government could exist without a similar provision. Look for a moment to the consequence. If South Carolina considers the revenue laws unconstitutional, and has a right to prevent their execution in the port of Charleston, there would be a clear constitutional objection to their collection in every other port, and no revenue could be collected any where, for all imposts must be equal. It is no answer to repeat, that an unconstitutional law is no law, so long as the question of its legality is to be decided by the state itself; for every law operating injuriously upon any local interest will be perhaps thought and certainly represented, as unconstitutional, and, as has been shown, there is no appeal.

If this doctrine had been established at an earlier day, the Union would have been dissolved in its infancy. The excise law of Pennsylvania, the embargo and non-intercourse law in the Eastern States, the carriage tax in Virginia, were all deemed unconstitutional and were more equal in

their operation than any of the laws now complained of; but fortunately none of those states discovered that they had the right now claimed by South Carolina. The war into which we were forced, to support the dignity of the nation and the rights of our citizens, might have ended in defeat and disgrace instead of victory and honor, if the states who supposed it a ruinous and unconstitutional measure had thought they possessed the right of nullifying the act by which it was declared, and denying supplies for its prosecution. Hardly and unequally as those measures bore upon several members of the Union, to the legislatures of none did this efficient and peaceable remedy, as it is called, suggest itself. The discovery of this important feature in our constitution was reserved to the present day. To the statesmen of South Carolina belongs the invention, and upon the citizens of that state will uniformly fall the evils of reducing it to practice.

If the doctrine of a state veto upon the laws of the Union carries with it internal evidence of its impracticable absurdity, our constitutional history will also afford abundant proof that it would have been repudiated with indignation had it been proposed to form a feature in our government.

In our colonial state, although dependent on another power, we very early considered ourselves as connected by common interest with each other. Leagues were formed for common defence, and before the Declaration of Independence we were known in our aggregate character as THE UNITED COLONIES OF AMERICA. That decisive and important step was taken jointly. We declared ourselves a nation by a joint, not by several acts, and when the terms of our confederation were reduced to form, it was in that of a solemn league of several states, by which had agreed that they would collectively form one nation for the purpose of conducting some certain domestic concerns and all foreign relations. In the instrument forming that union, is found an article which declares that "every state shall abide by the determinations of Congress on all questions which by that confederation should be submitted to them."

Under the confederation, then, no state could legally annul a decision of the Congress, or refuse to submit to its execution; but no provision was made to enforce these decisions. Congress made requisitions but they were not complied with. The government could not operate on individuals. They had no judiciary, no means of collecting revenue.

But the defects of the confederation need not be detailed. Under its operation we could scarcely be called a nation. We had neither prosperity at home nor consideration abroad. This state of things could not be endured, and our present happy constitution was formed, but formed in vain, if this fatal doctrine prevails. It was formed for important objects that are announced in the preamble made in the name, and by the authority of the people of the United States, whose delegates framed, and whose conventions approved it. The most important among these objects, that which is placed first in rank, on which all the others rest, is "*to form a more perfect Union.*" Now, is it possible that even if there were no express provision giving supremacy to the constitution and laws of the United States over those of the states—can it be conceived, that an instrument made for the purpose of "*forming a more perfect Union*" than that of the confederation, could be so constructed by the assembled wisdom of our country as to substitute for

that confederation a form of government, dependent for its existence on the local interest, the party spirit of a state, or of a prevailing faction in a state? Every man of plain, unsophisticated understanding, who hears the question, will give such an answer as will preserve the union. Metaphysical subtlety, in pursuit of an impracticable theory, could alone have devised one that is calculated to destroy it.

I consider then the power to annul a law of the United States, assumed by one state, INCOMPATIBLE WITH THE EXISTENCE OF THE UNION, CONTRADICTED EXPRESSLY BY THE LETTER OF THE CONSTITUTION, UNAUTHORISED BY ITS SPIRIT, INCONSISTENT WITH EVERY PRINCIPLE ON WHICH IT WAS FOUNDED, AND DESTRUCTIVE OF THE GREAT OBJECT FOR WHICH IT WAS FORMED.

After this general view of the leading principle, we must examine the particular application of it which is made in the Ordinance.

The preamble rests its justification on these grounds:—It assumes a fact, that the obnoxious laws, although they purport to be laws for raising revenue, were in reality intended for the protection of manufactures, which purpose it asserts to be unconstitutional; and that the operation of these laws is unequal; that the amount raised by them is greater than is required by the wants of the government; and, finally, that the proceeds are to be applied to objects unauthorized by the constitution. These are the only causes alleged to justify an open opposition to the laws of the country, and a threat of seceding from the union, if any attempt should be made to enforce them. The first virtually acknowledges, that the law in question was passed under a power expressly given by the constitution, to lay and collect imposts, but its constitutionality is drawn in question from the *motives* of those who passed it. However apparent this purpose may be in the present case, nothing can be more dangerous than to admit the position that an unconstitutional purpose, entertained by the members who assent to a law enacted under a constitutional power shall make that law void; for how is that purpose to be ascertained? Who is to make the scrutiny? How often may bad purposes be falsely imputed—in how many cases are they concealed by false professions—in how many is no declaration of motive made? Admit this doctrine, and you give to the states an uncontrolled right to decide, and every law may be annulled under this pretext. If, therefore, the absurd and dangerous doctrine should be admitted that a state may annul an unconstitutional law, or one that it deems such, it will not apply to the present case.

The next objection is, that the laws in question operate unequally. This objection may be made with truth, to every law that has been or can be passed. The wisdom of man never yet contrived a system of taxation that would operate with perfect equality. If the unequal operation of a law makes it unconstitutional, and if all laws of that description may be abrogated by any state for that cause, then indeed is the Federal Constitution unworthy of the slightest effort for its preservation. We have hitherto relied on it as the perpetual bond of our union. We have received it as the work of the assembled wisdom of the nation. We have trusted to it as the sheet anchor of our safety in the stormy times of conflict with a foreign or domestic foe. We have looked to it with sacred awe, as to the palladium of our liberties, and with all the solemnities of religion have pledged to each other our lives and fortunes here, and our hopes of happiness hereafter, in its defence and support.

Were we mistaken, my countrymen, in attaching this importance to the constitution of our country? Was our devotion paid to the wretched, inefficient, clumsy contrivance, which this new doctrine would make it? Did we pledge ourselves to the support of an airy nothing, a bubble that must be blown away by the first breath of disaffection? Was this self-destroying, visionary, theory, the work of the profound statesman, the exalted patriots, to whom the task of constitutional reform was entrusted? Did the name of Washington sanction, did the states deliberately ratify such an anomaly in the history of fundamental legislation? No. We were not mistaken. The letter of this great instrument is free from this radical fault; its language directly contradicts the imputation; its spirit—its evident intent contradicts it. No, we do not err! Our constitution does not contain the absurdity of giving power to make laws, and another power to resist them. The sages whose memory will always be revered, have given us a practical, and as they hoped a permanent constitutional compact. The father of his country did not affix his revered name to so palpable an absurdity. Nor did the states, when they severally ratified it, do so under the impression that a veto on the laws of the United States was reserved to them, or that they could exercise it by implication. Search the debates in all their conventions—examine the speeches of the most zealous opposers of federal authority—look at the amendments that were proposed—they are all silent—not a syllable uttered, not a vote given, not a motion made to correct the explicit supremacy given to the laws of the Union over those of the states—or to show that implication, as is now contended, could defeat it. No—we have not erred! The constitution is still the object of our union, our defence in danger, the source of our prosperity in peace. It shall descend, as we have received it, uncorrupted by sophistical construction, to our posterity, and the sacrifices of local interest, of state prejudices, of personal animosities, that were made to bring it into existence, will again be patriotically offered for its support.

The two remaining objections made by the ordinance to these laws are that the sums intended to be raised by them, are greater than are required, and that the proceeds will be unconstitutionally employed.

The constitution has given expressly to Congress the right of raising revenue and of determining the sum the public exigences will require. The states have no control over the exercise of this right, other than that which results from the power of changing the representatives who abuse it, and thus procure redress. Congress may undoubtedly abuse this discretionary power, but the same may be said of others with which they are vested. Yet the discretion must exist somewhere. The constitution has given it to the representative of all the people checked by the representatives of the states, and by the executive power. The South Carolina construction gives it to the legislature or the convention of a single state, where neither the people of the different states, nor the states in their separate capacity, nor the Chief Magistrate elected by the people have any representation. Which is the most discreet disposition of the power? I do not ask you, fellow citizens, which is the constitutional disposition—that instrument speaks a language not to be misunderstood. But if you were assembled in general convention, which would you think the safest depository of this discretionary power in the last resort? Would you add a clause giving it to each of the *states*, or would you sanction the wise provisions already made by your

constitution? If this should be the result of your deliberations when providing for the future, are you, can you be ready to risk all that you hold dear to establish, for a temporary and local purpose, that which you must acknowledge to be destructive and even absurd as a general provision? Carry out the consequences of this right vested in the different states, and you must perceive that the crisis your conduct presents at this day would recur whenever any law of the United States displeased any of the states, and that we should soon cease to be a nation.

The Ordinance, with the same knowledge of the future that characterizes a former objection, tells you that the proceeds of the tax will be unconstitutionally applied. If this could be ascertained with certainty, the objection would, with more propriety, be reserved for the law so applying the proceeds, but surely cannot be urged against the laws levying the duty.

These are the allegations contained in the Ordinance. Examine them seriously, my fellow-citizens—judge for yourselves. I appeal to you to determine whether they are so clear, so convincing, as to leave no doubt of their correctness: and even if you should come to this conclusion, how far they justify the reckless, destructive course, which you are directed to pursue. Review these objections, and the conclusions drawn from them once more. What are they? Every law then, for raising revenue, according to the South Carolina Ordinance may be rightfully annulled, unless it be so framed as no law ever will or can be framed. Congress have a right to pass laws for raising revenue, and each state has a right to oppose their execution—two rights directly opposed to each other; and yet is this absurdity supposed to be contained in an instrument drawn for the express purpose of avoiding collisions between the states and the general government, by an assembly of the most enlightened statesmen and purest patriots ever embodied for a similar purpose.

In vain have these sages declared that Congress shall have power to lay and collect taxes, duties, imposts, and excises—in vain have they provided that they shall have power to pass laws which shall be necessary and proper to carry those powers into execution; that those laws and that Constitution shall be the "supreme law of the land; and that the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding." In vain have the people of the several states solemnly sanctioned these provisions, made them their paramount laws, and individually sworn to support them whenever they were called on to execute any office. Vain provisions! ineffectual restrictions! vile profanation of oaths! miserable mockery of legislation! if a bare majority of the voters in any one state may, on a real or supposed knowledge of the intent with which a law has been passed, declare themselves free from its operation—say here it gives too little, there too much, and operates unequally—here it suffers articles to be free that ought to be taxed, there it taxes those that ought to be free—in this case the proceeds are intended to be applied to purposes which we do not approve; in that the amount raised is more than is wanted. Congress, it is true, are invested by the Constitution with the right of deciding these questions according to their sound discretion. Congress is composed of the representatives of all the states, and of all the people of all the states; but we, part of the people of one state, to whom the Constitution has given no power on the subject, from whom it has expressly taken it away—we, who have solemnly agreed that this Constitution shall be our law—we,

most of whom have sworn to support it—we, now abrogate this law, and swear, and force others to swear, that it shall not be obeyed—and we do this, not because Congress have no right to pass such laws; this we do not allege; but because they have passed them with improper views. They are unconstitutional from the motives of those who passed them, which we can never with certainty know, from their unequal operation; although it is impossible, from the nature of things, that they should be equal, and from the disposition which we presume may be made of their proceeds, although that disposition has not been declared. This is the plain meaning of the Ordinance in relation to laws which it abrogates for alleged unconstitutionality. But it does not stop there. It repeals, in express terms, an important part of the Constitution itself, and of laws passed to give it effect, which have never been alleged to be unconstitutional. The Constitution declares that the judicial powers of the United States extend to cases arising under the laws of the United States, and that such laws, the Constitution, and treaties shall be paramount to the state constitutions and laws. The judiciary act prescribes the mode by which the case may be brought before a court of the United States, by appeal, when a state tribunal shall decide against this provision of the Constitution. The Ordinance declares there shall be no appeal; makes the state law paramount to the Constitution and laws of the United States; forces judges and jurors to swear that they will disregard their provisions; and even makes it penal in a suitor to attempt relief by appeal. It further declares that it shall not be lawful for the authorities of the United States, or of that state, to enforce the payment of duties imposed by the revenue laws within its limits.

Here is a law of the United States, not even pretended to be unconstitutional, repealed by the authority of a small majority of the voters of a single state. Here is a provision of the Constitution which is solemnly abrogated by the same authority.

On such expositions and reasonings the Ordinance grounds not only an assertion of the right to annul the laws of which it complains, but to enforce it by a threat of seceding from the Union, if any attempt is made to execute them.

This right to secede is deduced from the nature of the Constitution, which, they say, is a compact between sovereign states who have preserved their whole sovereignty, and, therefore, are subject to no superior: that, because they made the compact, they can break it when, in their opinion, it has been departed from by the other states. Fallacious as this course of reasoning is, it enlists state pride, and finds advocates in the honest prejudices of those who have not studied the nature of our government sufficiently to see the radical error on which it rests.

The people of the United States formed the Constitution, acting through the state legislatures in making the compact, to meet and discuss its provisions, and acting in separate conventions when they ratified those provisions; but the terms used in its construction, show it to be a government in which the people of all the states collectively are represented. We are one people in the choice of the President and Vice President. Here the states have no other agency than to direct the mode in which the votes shall be given. The candidates having the majority of all the votes are chosen. The electors of a majority of states may have given their votes for one candidate, and yet another may be chosen. The people *then, and not the states*, are represented in the executive branch.

In the House of Representatives there is this difference, that the people of one state do not, as in the case of President and Vice President, all vote for the same officers. The people of all the states do not vote for all the members, each state electing only its own representatives. But this creates no material distinction. When chosen, they are all representatives of the United States, not representatives of the particular state from which they come. They are paid by the United States, not by the state; nor are they accountable to it for any act done in the performance of their legislative functions; and, however they may in practice, as it is their duty to do, consult and prefer the interests of their particular constituents when they come in conflict with any other partial or local interest, yet it is their first and highest duty, as representatives of the United States, to promote the general good.

The Constitution of the United States, then, forms a *government*, not a league; and whether it be formed by compact between the states, or in any other manner, its character is the same. It is a government in which all the people are represented, which operates directly on the people individually, not upon the states: they retained all the power they did not grant. But each state having expressly parted with so many powers as to constitute, jointly with the other states, a single nation, cannot, from that period, possess any right to secede, because such secession does not break a league, but destroys the unity of a nation, and any injury to that unity is not only a breach which would result from the contravention of a compact, but it is an offence against the whole Union. To say that any state may at pleasure secede from the Union, is to say that the United States are not a nation: because it would be a solecism to contend that any part of a nation might dissolve its connexion with the other parts, to their injury or ruin, without committing any offence. Secession, like any other revolutionary act, may be morally justified by the extremity of oppression; but to call it a constitutional right is confounding the meaning of terms, and can only be done through gross error, or to deceive those who are willing to assert a right, but would pause before they made a revolution, or incur the penalties consequent on a failure.

Because the Union was formed by compact, it is said the parties to that compact may, when they feel themselves aggrieved, depart from it; but it is precisely because it is a compact that they cannot. A compact is an agreement or binding obligation. It may, by its terms, have a sanction or penalty for its breach, or it may not. If it contains no sanction, it may be broken with no other consequence than moral guilt: if it have a sanction, then the breach incurs the designated or implied penalty. A league between independent nations, generally, has no sanction other than a moral one; or, if it should contain a penalty, as there is no common superior, it cannot be enforced. A government, on the contrary, always has a sanction, express or implied; and, in our case, it is both necessarily implied and expressly given. An attempt, by force of arms, to destroy a government, is an offence, by whatever means the constitutional compact may have been formed; and such government has the right, by the law of self-defence, to pass acts for punishing the offender, unless that right is modified, restrained, or resumed, by the constitutional act. In our system, although it is modified in the case of treason, yet authority is expressly given to pass all laws necessary to carry its powers into effect, and under this grant provision has been made for punishing acts which obstruct the due administration of the laws.

It would seem superfluous to add any thing to show the nature of that union which connects us ; but as erroneous opinions on this subject are the foundation of doctrines the most destructive to our peace, I must give some further development to my views on this subject. No one, fellow citizens, has a higher reverence for the reserved right of the states, than the magistrate who now addresses you. No one would make greater personal sacrifices, or official exertions, to defend them from violation ; but equal care must be taken to prevent, on their part, an improper interference with, or resumption of, the rights they have vested in the nation. The line has not been so distinctly drawn as to avoid doubts, in some cases, of the exercise of power. Men of the best intentions and soundest views may differ in their construction of some parts of the Constitution : but there are others on which dispassionate reflection can leave no doubt. Of this nature appears to be the assumed right of secession. It rests, as we have seen, on the alledged undivided sovereignty of the states, and on their having formed, in this sovereign capacity, a compact which is called the Constitution, from which, because they made it, they have a right to secede. Both of these positions are erroneous, and some of the arguments to prove them so have been anticipated.

The states severally have not retained their entire sovereignty. It has been shown that in becoming parts of a nation, not members of a league, they surrendered many of their essential parts of sovereignty. The right to make treaties—declare war—levy taxes—exercise exclusive judicial and legislative powers, were all of them functions of sovereign power. The states, then, for all these important purposes, were no longer sovereign. The allegiance of their citizens was transferred, in the first instance, to the government of the United States—they became American citizens, and owed obedience to the Constitution of the United States, and to laws made in conformity with the powers it vested in Congress. This last position has not been, and cannot be denied. How then can that state be said to be sovereign and independent, whose citizens owe obedience to laws not made by it, and whose magistrates are sworn to disregard those laws, when they come in conflict with those passed by another ? What shows conclusively that the states cannot be said to have reserved an undivided sovereignty is, that they expressly ceded the right to punish treason—not treason against their separate power—but treason against the United States. Treason is an offence against *sovereignty*, and sovereignty must reside with the power to punish it. But the reserved rights of the states are not less sacred, because they have, for their common interest, made the general government the depository of these powers. The unity of our political character (as has been shown for another purpose) commenced with its very existence. Under the royal government we had no separate character—our opposition to its oppressions began as United Colonies. We were the United States under the confederation, and the name was perpetuated and the Union rendered more perfect by the Federal Constitution. In none of these stages did we consider ourselves in any other light than as forming one nation. Treaties and alliances were made in the name of all. Troops were raised for the joint defence.—How then, with all these proofs that under all changes of our position we had, for designated purposes and with defined powers, created national governments—how is it, that the most perfect of these several

modes of Union, should now be considered as a mere league that may be dissolved at pleasure? It is from an abuse of terms. Compact is used as synonymous with league, although the true term is not employed because it would at once show the fallacy of the reasoning. It would not do to say that our constitution was only a league, but it is labored to prove it a compact (which in one sense it is) and then to argue that as a league is a compact, every compact between nations must of course be a league, and that from such an engagement every sovereign power has a right to secede. But it has been shown that in this sense the states are not sovereign, and that even if they were, and the national constitution had been formed by compact, there would be no right in any one state to exonerate itself from its obligations.

So obvious are the reasons which forbid this secession, that it is necessary only to allude to them. The Union was formed for the benefit of all. It was produced by mutual sacrifices of interests and opinions. Can those sacrifices be recalled? Can the states, who magnanimously surrendered their title to the territories of the west, recal the grant? Will the inhabitants of the inland states agree to pay the duties that may be imposed without their assent by those on the Atlantic or the Gulf, for their own benefit? Shall there be a free port in one state and onerous duties in another? No one believes that any right exists in a single state to involve all the others in these and countless other evils contrary to engagements solemnly made. Every one must see that the other states, in self defence, must oppose it at all hazards.

These are the alternatives that are presented by the convention: A repeal of all the acts for raising revenue, leaving the government without the means of support; or an acquiescence in the dissolution of our Union by the secession of one of its members. When the first was proposed, it was known that it could not be listened to for a moment. It was known if force was applied to oppose the execution of the laws that it must be repelled by force—that Congress could not, without involving itself in disgrace and the country in ruin, accede to the proposition; and yet if this is not done in a given day, or if any attempt is made to execute the laws, the state is, by the ordinance, declared to be out of the Union.

The majority of a convention assembled for the purpose, have dictated these terms, or rather this rejection of all terms, in the name of the people of South Carolina. It is true that the governor of the state speaks of the submission of their grievances to a convention of all the states; which he says they "sincerely and anxiously seek and desire." Yet this obvious and constitutional mode of obtaining the sense of the other states on the construction of the federal compact, and amending it, if necessary, has never been attempted by those who have urged the state on to this destructive measure. The state might have proposed the call for a general convention of the other states; and Congress, if a sufficient number of them concurred, must have called it. But the first magistrate of South Carolina, when he expressed a hope that, "on a review by Congress and the functionaries of the general government of the merits of the controversy," such a convention will be accorded to them, must have known that neither Congress nor any functionary of the general government has authority to call such a convention, unless it be demanded by two thirds of the states. This suggestion, then, is another instance of the reckless inattention to the provisions of the constitution with which this crisis has

been madly hurried on ; or of the attempt to persuade the people that a constitutional remedy has been sought and refused. If the legislature of South Carolina "anxiously desires" a general convention to consider their complaints, why have they not made application for it in the way the constitution points out. The assertion that they "earnestly seek" it, is completely negated by the omission.

This, then, is the position in which we stand. A small majority of the citizens of one state in the Union have elected delegates to a state convention: that convention has ordained that all the revenue laws of the United States must be repealed, or that they are no longer a member of the Union. The governor of that state has recommended to the legislature the raising of an army to carry the secession into effect, and that he may be empowered to give clearances to vessels in the name of the state. No act of violent opposition to the laws has yet been committed, but such a state of things is hourly apprehended, and it is the intent of this instrument to PROCLAIM not only that the duty imposed on me by the constitution "to take care that the laws be faithfully executed," shall be performed to the extent of the powers already vested in me by law, or of such others as the wisdom of Congress shall devise and entrust to me for that purpose ; but to warn the citizens of South Carolina, who have been deluded into an opposition to the laws, of the danger they will incur by obedience to the illegal and disorganizing ordinance of the convention—to exhort those who have refused to support it to persevere in their determination to uphold the constitution and laws of their country—and to point out to all, the perilous situation into which the good people of that state have been led—and that the course they are urged to pursue is one of ruin and disgrace to the very state whose rights they affect to support.

Fellow citizens of my native state!—let me not only admonish you, as the first magistrate of our common country, not to incur the penalty of its laws, but use the influence that a father would over his children whom he saw rushing to certain ruin. In that paternal language, with that paternal feeling, let me tell you my countrymen, that you are deluded by men who are either deceived themselves or wish to deceive you. Mark under what pretences you have been led on to the brink of insurrection and treason, on which you stand! First, a diminution of the value of your staple commodity, lowered by over production in other quarters, and the consequent diminution in the value of your lands, were the sole effect of the tariff laws. The effect of those laws was confessedly injurious, but the evil was greatly exaggerated by the unfounded theory you were taught to believe, that its burdens were in proportion to your exports, not to your consumption of imported articles. Your pride was roused by the assertion that a submission to those laws was a state of vassalage, and that resistance to them was equal, in patriotic merit, to the opposition our fathers offered to the oppressive laws of Great Britain. You were told that this opposition might be peaceably—might be constitutionally made—that you might enjoy all the advantages of the Union and bear none of its burthens. Eloquent appeals to your passions, to your state pride, to your native courage, to your sense of real injury, were used to prepare you for the period when the mask which concealed the hideous features of disunion, should be taken off. It fell, and you were made to look with complacency on objects which not long since you would have regarded with horror. Look back at

the arts which have brought you to this state; look forward to the consequences to which it must inevitably lead! Look back to what was first told you as an inducement to enter into this dangerous course. The great political truth was repeated to you, that you had the revolutionary right of resisting all laws that were palpably unconstitutional and intolerably oppressive—it was added that the right to nullify a law rested on the same principle, but that it was a peaceable remedy! This character which was given to it, made you receive with too much confidence the assertions that were made of the unconstitutionality of the law and its oppressive effects.

Mark, my fellow citizens, that by the admission of your leaders, the unconstitutionality must be palpable, or it will not justify either resistance or nullification! What is the meaning of the word *palpable* in the sense in which it is here used?—that which is apparent to every one, that which no man of ordinary intellect will fail to perceive. Is the unconstitutionality of these laws of that description? Let those among your leaders who once approved and advocated the principle of protective policy, answer the question; and let them choose whether they will be considered as incapable, then, of perceiving that which must have been apparent to every man of common understanding, or as imposing upon your confidence and endeavoring to mislead you now. In either case they are unsafe guides in the perilous paths they urge you to tread. Ponder well on this circumstance, and you will know how to appreciate the exaggerated language they address to you. They are not champions of liberty emulating the fame of our revolutionary fathers; nor are you an oppressed people, contending, as they repeat to you, against worse than colonial vassalage. You are free members of a flourishing and happy Union. There is no settled design to oppress you. You have indeed felt the unequal operation of laws which may have been unwisely, not unconstitutionally passed; but that inequality must necessarily be removed.

At the very moment when you were madly urged on to the unfortunate course you have begun, a change in public opinion had commenced. The nearly approaching payment of the public debt, and the consequent necessity of a diminution of duties, had already produced a considerable reduction, and that too on some articles of general consumption in your state. The importance of this change was underrated, and you were authoritatively told that no further alleviation of your burdens was to be expected at the very time when the condition of the country imperiously demanded such a modification of the duties as should reduce them to a just and equitable scale. But, as if apprehensive of the effect of this change in allaying your discontents, you were precipitated into the fearful state in which you now find yourselves.

I have urged you to look back to the means that were used to hurry you on to the position you have now assumed, and forward to the consequences it will produce. Something more is necessary. Contemplate the condition of that country of which you still form an important part!—consider its government uniting in one bond of common interest and general protection so many different states—giving to all their inhabitants the proud title of *American citizens*—protecting their commerce—securing their literature and their arts—facilitating their intercommunication—defending their frontiers—and making their name respect-

ed in the remotest parts of the earth! Consider the extent of its territory, its increasing and happy population, its advance in arts, which render life agreeable, and the sciences, which elevate the mind. See education spreading the lights of religion, humanity, and general information, into every cottage in this wide extent of our territories and states! Behold it as the asylum where the wretched and the oppressed find a refuge and support! Look on this picture of happiness and honor, and say, WE, TOO, ARE CITIZENS OF AMERICA; Carolina is one of these proud states: her arms have defended—her best blood has cemented, this happy Union! And then add, if you can, without horror and remorse, this happy Union we will dissolve—this picture of peace and prosperity we will deface—this free intercourse we will interrupt—these fertile fields we will deluge with blood—the protection of that glorious flag we renounce—the very name of Americans we discard. And for what, mistaken men! for what do you throw away these inestimable blessings—for what would you exchange your share in the advantages and honor of the Union? For the dream of a separate independence—a dream interrupted by bloody conflicts with your neighbors, and a vile dependence on a foreign power. If your leaders could succeed in establishing a separation, what would be your situation? Are you united at home—are you free from the apprehension of civil discord, with all its fearful consequences? Do our neighboring republics, every day suffering some new revolution, or contending with some new insurrection—do they excite your envy? But the dictates of a high duty oblige me solemnly to announce that you cannot succeed.

The laws of the United States must be executed. I have no discretionary power on the subject; my duty is emphatically pronounced in the constitution. Those who told you that you might peaceably prevent their execution, deceived you—they could not have been deceived themselves. They know that a forcible opposition could alone prevent the execution of the laws, and they know that such opposition must be repelled. Their object is disunion: but be not deceived by names: disunion, by armed force, is TREASON. Are you really ready to incur its guilt? If you are, on the heads of the instigators of the act be the dreadful consequences—on their heads be the dishonor, but on yours may fall the punishment, on your unhappy state will inevitably fall all the evils of the conflict you force upon the government of your country. It cannot accede to the mad project of disunion, of which you would be the first victims—its first magistrate cannot, if he would, avoid the performance of his duty—the consequence must be fearful for you, distressing to your fellow citizens here, and to the friends of good government throughout the world.

Its enemies have beheld our prosperity with a vexation they could not conceal—it was a standing refutation of their slavish doctrines, and they will point to our discord with the triumph of malignant joy. It is yet in your power to disappoint them. There is yet time to show that the descendands of the Pinckneys, the Sumpters, the Rutledges, and of the thousand other names which adorn the pages of your revolutionary history, will not abandon that union, to support which so many of them fought, and bled, and died. I adjure you as you honor their memory—as you love the cause of freedom, to which they dedicated their lives—as you prize the peace of your country, the lives of its best citizens, and your own fair fame, to retrace your steps. Snatch from the archives

of your state, the disorganizing edict of its convention—bid its members to reassemble and promulgate the decided expression of your will to remain in the path which alone can conduct you to safety, prosperity, and honor—tell them that compared to disunion, all other evils are light, because that brings with it an accumulation of all—declare that you will never take the field unless the star-spangled banner of your country shall float over you—that you will not be stigmatized when dead, and dishonored and scorned while you live, as the authors of the first attack on the constitution of your country!—Its destroyers you cannot be. You may disturb its peace—you may interrupt the course of its prosperity—you may cloud its reputation for stability—but its tranquility will be restored, its prosperity will return, and the stain upon its national character will be transferred and remain an eternal blot on the memory of those who caused the disorder.

Fellow citizens of the United States ! The threat of unhallowed disunion—the names of those once respected, by whom it is uttered—the array of military force to support it—denote the approach of a crisis in our affairs, on which the continuance of our unexampled prosperity, our political existence, and, perhaps, that of all free governments may depend. The conjuncture demanded a free, a full, and explicit enunciation, not only of my intentions but of my principles of action ; and as the claim was asserted of a right by a state to annul the laws of the union, and even to secede from it at pleasure, a frank exposition of my opinions in relation to the origin and form of our government, and the construction I give to the instrument by which it was created, seemed to be proper. Having the fullest confidence in the justness of the legal and constitutional opinion of my duties which has been expressed, I rely with equal confidence on your undivided support in my determination to execute the laws—to preserve the Union by all constitutional means—to arrest if possible, by moderate but firm measures, the necessity of a recourse to force ; and, if it be the will of Heaven that the recurrence of its primeval curse on man for the shedding of a brother's blood, should fall upon our land, that it be not called down by any offensive act on the part of the United States.

Fellow citizens ! The momentous case is before you. On your undivided support of your government, depends the decision of the great question it involves, whether your sacred union will be preserved, and the blessing it secures to us as one people shall be perpetuated. No one can doubt the unanimity with which that decision will be expressed will be such as to inspire new confidence in republican institutions, and that the prudence, the wisdom, and the courage which it will bring to their defence, will transmit them unimpaired and invigorated, to our children.

May the great Ruler of nations grant that the signal blessings with which He has favored ours, may not by the madness of party or personal ambition, be disregarded and lost ; and may His wise Providence bring those who have produced this crisis, to see the folly before they feel the misery of civil strife ; and inspire a returning veneration for that union, which, if we may dare to penetrate His designs, he has chosen as the only means of attaining the high destinies to which we may reasonably aspire.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed, having signed the same with my hand.

Done at the City of Washington, this 10th day of December, in the year of our Lord, one thousand eight hundred and thirty-two, and of the Independence of the United States, the fifty-seventh.

ANDREW JACKSON.

By the President,

EDW. LIVINGSTON, Secretary of State.

ELECTIONS

OF

PRESIDENT AND VICE PRESIDENT.

A statement of the votes given by the Presidential Electors, for President and Vice President of the United States, since the adoption of the Constitution.

N. B. At the four first elections, the candidates were voted for agreeably to the original provision of the Constitution, [see page 17] which was afterwards amended, by which the person having the highest vote was elected President, and the next highest, Vice President. In 1800, the votes for Mr. Jefferson and Mr. Burr, being equal, the election was decided by the House of Representatives, in 1801, after protracted ballotings, in favor of Mr. Jefferson.

[Electors of President appointed 1st Wednesday of Jan. 1789.

Election of President, 1st Wednesday of Feb. 1789.

Constitution went into operation, 1st Wednesday of March, 1789.

President Washington inaugurated, April 30, 1789.]

1789.—*Whole number of votes for President and Vice President, 69.*

—George Washington, 69; John Adams, 34; John Jay, 9; R. R. Hanson, 6; John Rutledge, 6; John Hancock, 4; George Clinton, 3; Samuel Huntington, 2; John Milton, 2; James Armstrong, 1; Edward Telfair, 1; Benjamin Lincoln, 1;—69

[At the first election the states were entitled to the following electoral votes, viz.:—New Hampshire, 5; Massachusetts, 10; Rhode Island, 3; Connecticut, 7; New York, 8; New Jersey, 6; Pennsylvania, 10; Delaware, 3; Maryland, 8; Virginia, 12; North Carolina, 7; South Carolina, 7; Georgia, 5.—Total, 91. New York, Rhode Island, and North Carolina did not vote.]

1792.—George Washington, 132; John Adams, 77; George Clinton, 50; Thomas Jefferson, 4; Aaron Burr, 1;—132.

1796.—John Adams, 71; Thomas Jefferson, 68; Thomas Pinckney, 59; Aaron Burr, 30; Samuel Adams, 15; Oliver Ellsworth, 11; George Clinton, 7; John Jay, 5; James Iredell, 3; George Washington, 2; Samuel Johnston, 2; John Henry, 2; Charles C. Pinckney, 1;—276; number of votes, 138.

1800.—Thomas Jefferson, 73; Aaron Burr, 73; John Adams, 65; Charles C. Pinckney, 64; John Jay, 1;—276; number of votes, 138.

1804. President—Thomas Jefferson, 162; Charles C. Pinckney, 14. Vice President—George Clinton, 162; Rufus King, 14;—number of votes, 176.

1808. President—James Madison, 122; Charles C. Pinckney, 47; George Clinton, 6. Vice President—George Clinton, 113; Rufus King, 47; John Langdon, 9; James Monroe, 3; James Madison, 3; number of votes, 175.

1812. President—James Madison, 128; Dewitt Clinton, 89. Vice President—Elbridge Gerry, 131; Jared Ingersoll, 86; number of votes, 217.

1816. President—James Monroe, 183; Rufus King, 34. Vice President—Daniel D. Tompkins, 183; James E. Edwards, 22; James Ross, 5; John Marshall, 4; Robert G. Harper, 3; number of votes, 217.

1820. President—James Monroe, 228; John Quincy Adams, 1. Vice President—Daniel D. Tompkins, 215; Richard Stockton, 8; Daniel Rodney, 4; Richard Rush, 1; Robert G. Harper, 1; number of votes, 229.

1824. President—Andrew Jackson, 99; *John Quincy Adams, 84; William H. Crawford, 41; Henry Clay, 37. Vice President—John C. Calhoun, 182; Nathan Sanford, 30; Nathaniel Macon, 24; Andrew Jackson, 13; Martin Van Buren, 9; Henry Clay, 2; number of votes, 261.

1828. President—Andrew Jackson, 178; John Quincy Adams, 83. Vice President—John C. Calhoun, 178; Richard Rush, 83; number of votes, 261.

1832. President—Andrew Jackson, 219; Henry Clay, 49; John Floyd, 11; William Wirt, 7. Vice President—Martin Van Buren, 189; John Sergeant, 49; William Wilkins, 30; Henry Lee, 11; Amos Ellmaker, 7; number of votes, 286.

Dates of the Adoption of the Constitution, by the several original States.

- 1—Delaware, December 7, 1787.
- 2—Pennsylvania, December 12, 1787.
- 3—New Jersey, December 18, 1787.
- 4—Georgia, January 2, 1788.
- 5—Connecticut, January 9, 1788.
- 6—Massachusetts, February 7, 1788.
- 7—Maryland, April 28, 1788.
- 8—*South Carolina*, May 23, 1788.
- 9—*New Hampshire*, June 21, 1788.
- 10—*Virginia*, June 27, 1788.
- 11—*New York*, July 26, 1788.
- 12—*North Carolina*, November 21, 1789.
- 13—*Rhode Island*, May 29, 1790.

The seven states in italics, recommended amendments.

* Mr. Adams was elected President by the House of Representatives, having the vote of thirteen states on the first ballot.

VOTES ON THE TARIFFS.

*Statement of the votes in the United States' House of Representatives,
on the various Tariff Bills, since 1816.*

Vote on the Tariff of 1816.

Vote on the Tariff of 1824.

EASTERN STATES.

Yea.	Nays.	Absent.		Yea.	Nays.	Absent.
0	0	0	Maine.	1	6	0
1	3	2	New Hampshire.	1	5	0
4	1	1	Vermont.	5	0	0
7	4	9	Massachusetts.	1	11	1
2	0	0	Rhode Island.	2	0	0
2	2	3	Connecticut.	5	1	0
16	10	15		15	23	1

MIDDLE STATES.

20	2	5	New York.	26	8	0
5	0	1	New Jersey.	6	0	0
17	3	3	Pennsylvania.	24	1	1
0	0	2	Delaware.	1	0	0
2	5	2	Maryland.	3	6	0
44	10	13		60	15	1

SOUTHERN STATES.

7	13	3	Virginia.	1	21	0
0	11	2	North Carolina.	0	13	0
4	3	2	South Carolina.	0	9	0
3	3	0	Georgia.	0	7	0
			Alabama.	0	3	0
			Mississippi.	0	1	0
0	1	0	Louisiana.	0	3	0
14	31	7		1	57	0

WESTERN STATES.

6	1	3	Kentucky.	11	0	1
3	2	1	Tennessee.	2	7	0
5	0	1	Ohio.	14	0	0
			Indiana.	2	0	1
			Illinois.	1	0	0
			Missouri.	1	0	0
14	3	5		31	7	2
98	54	40	Total.	107	102	4

VOTES ON THE TARIFFS.

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Vote on the Tariff of 1828.

Vote on the Tariff of 1832.

EASTERN STATES.

Yea.	Nays	Absent.		Yea.	Nays	Absent.
0	7	0	Maine.	6	1	0
4	2	0	New Hampshire.	5	0	1
2	11	0	Massachusetts.	4	8	1
1	1	0	Rhode Island.	0	2	0
4	2	0	Connecticut.	2	3	1
4	1	0	Vermont.	0	3	2
15	24	0		17	17	5

MIDDLE STATES.

27	6	1	New York.	27	2	5
5	0	1	New Jersey.	3	3	0
23	0	3	Pennsylvania.	14	13	0
1	0	0	Delaware.	0	1	0
1	5	3	Maryland.	8	0	1
57	11	8		52	18	6

SOUTHERN STATES.

3	15	4	Virginia.	11	8	3
0	13	0	North Carolina.	8	4	1
0	8	1	South Carolina.	3	6	0
0	7	0	Georgia.	1	6	0
0	3	0	Louisiana.	1	2	0
0	3	0	Alabama.	2	1	0
0	1	0	Mississippi.	1	0	0
3	50	5		27	27	4

WESTERN STATES.

13	0	0	Kentucky.	9	3	0
0	9	0	Tennessee.	9	0	0
13	0	1	Ohio.	13	0	1
3	0	0	Indiana.	3	0	0
0	1	0	Missouri.	1	0	0
1	0	0	Illinois.	1	0	0
29	10	1		36	3	1
105	94	14	Total.	132 *	65	16

Thus it appears by the above table that at the passage of no Tariff has a majority of the whole New England delegation voted for the Tariff, either in 1816, '24, '28 or '32.

In	1816	Yea.	Nays	Absent.
	1816	16	10	15
	1824	15	23	1
	1828	15	24	0
	1832	17	17	5

VIRGINIA RESOLUTIONS OF 1810.

The Middle States have sustained the several Tariffs which have been passed, by strong and decided majorities, as appears by examination.

		Yea.	Nay.	Absent.
In	1816	44	10	13
	1824	60	15	1
	1828	57	11	8
	1832	52	18	6

The same remarks will also apply to the Western States. They have always gone for the Tariff.

		Yea.	Nay.	Absent.
In	1816	14	3	5
	1824	31	7	2
	1828	29	10	1
	1832	36	3	1

The Southern States have gone strongly against every Tariff, until that of 1832.

		Yea.	Nay.	Absent.
In	1816	14	31	7
	1824	1	57	0
	1828	3	50	5
	1832	27	27	4

VIRGINIA RESOLUTIONS OF 1810.

The following proceedings of the Virginia Legislature, in 1809-10, having been frequently referred to in Constitutional discussions, are deemed sufficiently important for insertion here. They were unanimously adopted in each House, namely, by the House of Delegates, January 23, and by the Senate, January 26, 1810.

VIRGINIA LEGISLATURE.

Extract from the Message of Gov. Tyler, of Virginia, Dec. 4, 1809.

"A proposition from the state of Pennsylvania is herewith submitted, with Governor Snyder's letter accompanying the same, in which is suggested the propriety of amending the Constitution of the United States, so as to prevent collision between the Government of the Union and the State Governments."

HOUSE OF DELEGATES.

Friday, December 15, 1809.

On motion, Ordered, That so much of the Governor's communication as relates to the communication from the Governor of Pennsylvania, on the subject of an amendment proposed by the Legislature of that

state to the constitution of the United States, be referred to Messrs. Peyton, Otey, Cabell, Walker, Madison, Holt, Newton, Parker, Stevenson, Randolph (of Amelia), Cocke, Wyatt, and Ritchie.—*Page 25 of the Journal.*

Thursday, January 11, 1810.

Mr. Peyton, from the committee to whom was referred that part of the Governor's communication which relates to the amendment proposed by the State of Pennsylvania, to the Constitution of the United States, made the following report:

The committee to whom was referred the communication of the Governor of Pennsylvania, covering certain resolutions of the Legislature of that state, proposing an amendment of the Constitution of the United States, by the appointment of an impartial tribunal to decide disputes between the states and Federal Judiciary, have had the same under their consideration, and are of opinion that a tribunal is already provided by the Constitution of the United States, to wit: the Supreme Court, more eminently qualified from their habits and duties, from the mode of their selection, and from the tenure of their offices, to decide the disputes aforesaid, in an enlightened and impartial manner, than any other tribunal which could be created.

The members of the Supreme Court are selected from those in the United States who are most celebrated for virtue and legal learning, not at the will of a single individual, but by the concurrent wishes of the President and Senate of the United States: they will therefore have no local prejudices and partialities. The duties they have to perform lead them necessarily to the most enlarged and accurate acquaintance with the jurisdiction of the Federal and State Courts together, and with the admirable symmetry of our government. The tenure of their offices enables them to pronounce the sound and correct opinions they may have formed without fear, favor, or partiality.

The amendment to the constitution proposed by Pennsylvania, seems to be founded upon the idea that the federal judiciary will, from a lust of power, enlarge their jurisdiction to the total annihilation of the jurisdiction of the state courts, that they will exercise their will, instead of the law and the constitution.

This argument, if it proves anything, would operate more strongly against the tribunal proposed to be created, which promises so little, than against the Supreme Court, which, for the reasons given before, have everything connected with their appointment calculated to ensure confidence. What security have we, were the proposed amendment adopted, that this tribunal would not substitute their will, and their pleasure, in place of the law? The judiciary are the weakest of the three departments of government, and least dangerous to the political rights of the constitution; they hold neither the purse nor the sword; and even to enforce their own judgments and decisions, must ultimately depend upon the executive arm. Should the federal judiciary, however unmindful of their weakness, unmindful of the duty which they owe to themselves and their country, become corrupt, and transcend the limits of their jurisdiction, would the proposed amendment oppose even a probable barrier in such an improbable state of things?

The creation of a tribunal, such as is proposed by Pennsylvania, so far as we are able to form an idea of it from the descriptions given in

the resolutions of the legislature of that state, would, in the opinion of your committee, tend rather to invite than to prevent collisions between the Federal and State Courts. It might also become, in process of time, a serious and dangerous embarrassment to the operations of the General Government.

Resolved, therefore, that the legislature of this state do disapprove of the amendment to the Constitution of the United States, proposed by the Legislature of Pennsylvania.

Resolved, also, that his excellency the governor be, and he is hereby, requested to transmit forthwith a copy of the foregoing preamble and resolutions to each of the senators and representatives of this state in Congress, and to the executive of the several states in the Union, with a request that the same be laid before the Legislatures thereof.

The said resolutions, being read a second time, were, on motion, ordered to be referred to a committee of the whole house on the state of the commonwealth.

[Adopted unanimously without amendment, in the House of Delegates, January 23, and in the Senate, January 26, 1810.]

Mr. Calhoun's Remarks in the Senate of the United States, January 16th, 1833, on the President's Message transmitting the South Carolina Documents, &c.

A message was received from the President of the United States, accompanying the Proclamation and other documents relating to South Carolina, her Ordinance, &c, &c.

The reading of the message occupied an hour and a quarter. As soon as it was finished—

Mr. Grundy moved to refer the message and documents to the committee on the Judiciary, and that they be printed.

Mr. Calhoun then rose and said, that his object in taking the floor was not to make any remark on the motion which was immediately before the Senate. What he was about to say, therefore, would, under parliamentary rule, be entirely out of order. But he would, in the peculiar circumstances of his situation, throw himself on the indulgence of the Senate, for his pardon for the entire irrelevance of the remarks which he should feel himself bound to make.

He felt no disposition to notice many of the errors which the message contained in reference to the documents by which it was accompanied, but there was one which he should deem himself a recreant to his state if he did not rise emphatically and promptly to notice. It was stated by the Chief Magistrate, in substance, that the movements made by the state of South Carolina were of a character hostile to the Union. Was he right in this impression? If so, he would say that there was not a shadow of foundation for such a statement. There was not a state in the Union less disposed than South Carolina to put herself in such attitude of hostility. But the grounds on which the President founds this inference were not more extraordinary than the inference itself. When he stated that had been made, it was to be regretted that the whole of the movements of this character. Before South Carolina had taken any position

of a conflicting character, there had been a concentration of United States' troops on two points, obviously for the purpose of controlling the movements of the state. One of these concentrations was at Augusta, and the other at Charleston. Previous to this circumstance, the state of South Carolina had looked to nothing beyond a civil process, and had intended merely to give effect to her opposition in the form of a suit at law. It was only when a military force was displayed on her borders, and in her limits, and when the menace was thrown out against the lives of her citizens, and of their wives and children, that they found themselves driven to an attitude of resistance. Then it was that they all prepared to resist any aggression.

But the president had also rested his inference on another ground. He laid it down that the tribunal of the Supreme Court of the United States was, in the last resort, the only arbiter of the difference in the construction of the constitutionality of the laws. On this point there seems to have been a great change in the opinion of the executive within the last twelve months. The president had not held this opinion in reference to the resistance of the state of Georgia. A narrow river only divides the territory of Georgia from that of South Carolina, yet, on the one side, the power of the Supreme Court, as the arbiter in the last resort, is to be sustained; while, on the other side the will of the executive is to be supreme.

But, if the Supreme Court was to be the arbiter, he wished to know in what manner the decision of that tribunal as to the constitutionality of the Tariff law, as a measure of protection, was to be obtained? How was an issue to be made up? This mode had already been tried in the case of Holmes, a citizen of Charleston, and the court had declared its incapacity to act for want of jurisdiction, and refused to take cognizance of the subject. He wished to know why this circumstance had been suppressed—no, suppressed was too strong a term—forgotten in the message of the executive. It will be remembered that when the bill of 1828 was introduced, which had been justly called by the Senator from Massachusetts, a bill of abominations, a representative from South Carolina had ineffectually endeavored to obtain an amendment of the title of it, so that it might bear on its face the character of protection, which belonged to it. But it was sent abroad under a delusive and deceptive name. How, then, was South Carolina to try the question? Even if she had every reliance on the authority of the Supreme Court, she could not obtain the judgment of that court. What course then was left for South Carolina, but that which she had pursued?

It was also suggested in the message of the executive, that the state ought to have resorted to the other remedy which was pointed out, and asked at an earlier period for a Convention of the States, in order to amend the Constitution. South Carolina had been prevented from many applications on this subject. She had wished over and over again to obtain a Convention, but she had uniformly found a fixed majority in both houses against her. How, then, was she to obtain the acquiescence of the constitutional majority of two thirds of the two houses? Under these circumstances, she made no application until the State itself had declared it unconstitutional, and the emergency arose which called for it.

It was obvious that the country had now reached a crisis. It had been often said that every thing which lives carries in itself the elements of its own destruction. This principle was no less applicable to political, than to physical constructions. The principle of decay is in

be found in our institutions; and unless it can be checked and corrected in its course, by the wisdom of the federal government, its operation will form no exception to the general course of events. The only cause of wonder in his opinion was, that our Union had continued so long; that, at the end of forty-four years, our government should still retain its original form. He considered that to the great event of 1801, the success of the party which had elevated Mr. Jefferson to the presidency, was mainly to be attributed this duration. Nothing but the elevation of that individual had prevented the earlier termination of an experiment. But the time had at length come when we are required to decide whether this shall be a confederacy any longer, or whether it shall give way to a consolidated government. He called on senators solemnly to pause and deliberate on this important question. As he lived, he believed that the continuance of any consolidated government was impossible. It must inevitably lead to military despotism. At this moment, without having been brought into contact with any adverse circumstances, without any conflicting causes, in a time of peace, and under the influence of an unexampled prosperity, our Union stands on the eve of dissolution, or the verge of a civil war. How was this? Was it not attributable to the powerful workings of the consolidation principle?

* * * * *

Gentlemen might contend that this was not a question of consolidation. But it is consolidation. And he could see no distinction between a consolidated government and one which assumed the right of judging of the propriety of interposing military power to coerce a State.

We (said Mr. C.) made no such government. South Carolina sanctioned no such government. She entered the confederacy with the understanding that a State, in the last resort, has a right to judge of the expediency of resistance to oppression, or secession from the Union. And for so doing, it is that we are threatened to have our throats cut, and those of our wives and children. No; I go too far. I did not intend to use language so strong. The chief magistrate had not yet recommended so desperate a remedy. The present is a great question, and the liberties of the American people depend upon the decision of it. It was impossible that a consolidated government could exist in this country. It never can. Did I say in this country? It never can exist in any country. If any man would look into the history of the world, and find any single case in which the government of absolute majority, unchecked by any constitutional restraints, had lasted one century, he would yield the question. For himself he had been from his earliest life deeply attached to the Union; and he felt, with a proportionate intensity, the importance of this question. In his early youth, he had cherished a deep and enthusiastic admiration of this Union. He had looked on its progress with rapture, and encouraged the most sanguine expectations of its endurance. He still believed that if it could be conformed to the principles of 1798, as they were then construed, it might endure forever. Bring back the government to those principles, and he would be the last to abandon it, and South Carolina would be amongst its warmest advocates. But depart from these principles, and, in the course of ten years, we shall degenerate into a military despotism. The cry had been raised—"the Union is in danger." He knew of no other danger but that of military despotism. He would proclaim it on this floor that this was the greatest danger with which it was menaced, a danger the greatest which any country had to apprehend.





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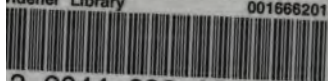
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